

17 Am. Jur. 2d Consumer Protection Two XI A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#) 🔑 128, 134, 135(1), 135(2), 136, 138, 140 to 146(3), 151, 152, 161 to 168, 175 to 177, 195, 198 to 201, 209, 211 to 218, 221, 222, 256, 257, 260

West's Key Number Digest, Consumer Credit 🔑 1, 2

A.L.R. Library

A.L.R. Index, Advertising

A.L.R. Index, Consumer Protection

A.L.R. Index, Insurance

A.L.R. Index, Trademarks, Trade Names, and Unfair Trade Practices

West's A.L.R. Digest, [Antitrust and Trade Regulation](#) 🔑 128, 134, 135(1), 135(2), 136, 138, 140 to 146(3), 151, 152, 161 to 168, 175 to 177, 195, 198 to 201, 209, 211 to 218, 221, 222, 256, 257, 260

West's A.L.R. Digest, Consumer Credit 🔑 1, 2

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 272

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

1. In General

§ 272. Nature, purpose, and construction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  128, 134

The enactment of a state consumer protection statute prohibiting unfair or deceptive acts or practices expands, supplements, and extends the rights and remedies available at common law or under prior statutes.¹

The fundamental purpose of a state's remedial² consumer protection or unfair-and-deceptive-practices statute is to benefit³ and protect consumers,⁴ requiring a broad⁵ or liberal construction and application in favor of those whom the legislature intended to benefit,⁶ but even a liberal construction does not extend to protecting consumers from themselves.⁷ Courts look to the statute's objective⁸ or purpose in deciding its application⁹ and particularly the intent of the legislature.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

If the Legislature has permitted certain conduct or considered a situation and concluded no action should lie, then a plaintiff may not plead around absolute barriers to relief by relabeling the nature of the action as one brought under California's Unfair Competition Law (UCL). [West's Ann.Cal.Bus. & Prof.Code § 17200 et seq. Sciortino v. PepsiCo, Inc., 108 F. Supp. 3d 780 \(N.D. Cal. 2015\).](#)

No statute of limitations applies to a public action under the Unlawful Trade Practices Act (UTPA). [West's Or.Rev. Stat. Ann. § 646.632](#). [Pearson v. Philip Morris, Inc.](#), 358 Or. 88, 361 P.3d 3 (2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Kraft Power Corp. v. Merrill](#), 464 Mass. 145, 981 N.E.2d 671 (2013); [Chochorowski v. Home Depot U.S.A.](#), 404 S.W.3d 220 (Mo. 2013); [Cruz v. Andrews Restoration, Inc.](#), 364 S.W.3d 817 (Tex. 2012); [Vanderbilt Mortg. and Finance, Inc. v. Cole](#), 230 W. Va. 505, 740 S.E.2d 562 (2013).
The state consumer sales practices act is remedial, designed to compensate for incomplete consumer remedies at common law. [Anderson v. Barclay's Capital Real Estate, Inc.](#), 136 Ohio St. 3d 31, 2013-Ohio-1933, 989 N.E.2d 997 (2013).
The statutory prohibitions are not limited to acts or practices that are actionable at common law. [Olszewski v. Scripps Health](#), 30 Cal. 4th 798, 135 Cal. Rptr. 2d 1, 69 P.3d 927 (2003).
- 2 [Naiser v. Unilever U.S., Inc.](#), 81 U.C.C. Rep. Serv. 2d 864 (W.D. Ky. 2013); [Shaw v. CTVT Motors, Inc.](#), 232 Ariz. 30, 300 P.3d 907 (Ct. App. Div. 1 2013), as amended, (Mar. 29, 2013); [Noyes v. Antiques at Pompey Hollow, LLC](#), 144 Conn. App. 582, 73 A.3d 794 (2013).
- 3 [Austin Maintenance & Const., Inc. v. Crowder Const. Co.](#), 742 S.E.2d 535 (N.C. Ct. App. 2012); [Peterson v. Kitsap Community Federal Credit Union](#), 171 Wash. App. 404, 287 P.3d 27 (Div. 2 2012).
- 4 [Chochorowski v. Home Depot U.S.A.](#), 404 S.W.3d 220 (Mo. 2013); [Perez v. Professionally Green, LLC](#), 215 N.J. 388, 73 A.3d 452 (2013); [Anderson v. Barclay's Capital Real Estate, Inc.](#), 136 Ohio St. 3d 31, 2013-Ohio-1933, 989 N.E.2d 997 (2013); [DeArmitt v. New York Life Ins. Co.](#), 2013 PA Super 161, 73 A.3d 578 (2013).
- 5 [Western Convenience Stores, Inc. v. Suncor Energy \(U.S.A.\) Inc.](#), 2013-2 Trade Cas. (CCH) ¶ 78593, 2013 WL 4775894 (D. Colo. 2013) (applying Colorado law); [Heyert v. Taddese](#), 431 N.J. Super. 388, 70 A.3d 680 (App. Div. 2013).
- 6 [State v. Acordia, Inc.](#), 310 Conn. 1, 73 A.3d 711 (2013); [Kesling v. Hubler Nissan, Inc.](#), 997 N.E.2d 327 (Ind. 2013); [Anderson v. Barclay's Capital Real Estate, Inc.](#), 136 Ohio St. 3d 31, 2013-Ohio-1933, 989 N.E.2d 997 (2013).
- 7 [Kesling v. Hubler Nissan, Inc.](#), 997 N.E.2d 327 (Ind. 2013).
- 8 [D'Agostino v. Maldonado](#), 216 N.J. 168, 78 A.3d 527 (2013).
- 9 [Viggiano v. Hansen Natural Corp.](#), 944 F. Supp. 2d 877, 80 U.C.C. Rep. Serv. 2d 798 (C.D. Cal. 2013) (applying California law); [Chochorowski v. Home Depot U.S.A.](#), 404 S.W.3d 220 (Mo. 2013).
The application of the statute depends on finding a violation of an identifiable public policy. [Di Teresi v. Stamford Health System, Inc.](#), 142 Conn. App. 72, 63 A.3d 1011 (2013).
- 10 [State v. Acordia, Inc.](#), 310 Conn. 1, 73 A.3d 711 (2013); [Chochorowski v. Home Depot U.S.A.](#), 404 S.W.3d 220 (Mo. 2013); [DeArmitt v. New York Life Ins. Co.](#), 2013 PA Super 161, 73 A.3d 578 (2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 273

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

1. In General

§ 273. Statutes modeled on federal acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  128

West's Key Number Digest, Consumer Credit  2

Decisions interpreting various federal consumer protection statutes are used to construe state consumer protection statutes modeled on the federal statutes, such as the federal Truth in Lending Act,¹ the Federal Trade Commission Act,² and the Federal Fair Debt Collection Practices Act.³ If the stated purpose of both statutes is the same, construction and application of the state statute by reference to the federal statute is appropriate and common,⁴ but express provisions of the state statute need not be overridden by interpretations consistent with federal law.⁵ If the relevant federal statute sets the floor for state law but not the ceiling, the interpretation of the state statute is not limited by federal law.⁶

Observation:

The provision of a state consumer protection act mandating that its interpretation give due consideration and great weight to analogous provisions of the Federal Trade Commission Act did not require the state's supreme court to overrule its precedents interpreting the state act given that subsequent changes in federal law would result in less protection for consumers and business.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Smith-Pena](#), 484 B.R. 512 (Bankr. D. Mass. 2013) (applying Massachusetts law).
- 2 [ASRC Energy Services Power and Communications, LLC v. Golden Valley Elec. Ass'n, Inc.](#), 267 P.3d 1151 (Alaska 2011); [Kraft Power Corp. v. Merrill](#), 464 Mass. 145, 981 N.E.2d 671 (2013).
- 3 [Jarvis v. First Resolution Mgt. Corp.](#), 2012-Ohio-5653, 983 N.E.2d 380 (Ohio Ct. App. 9th Dist. Summit County 2012), appeal allowed, 135 Ohio St. 3d 1412, 2013-Ohio-1622, 986 N.E.2d 29 (2013).
- 4 [Kraft Power Corp. v. Merrill](#), 464 Mass. 145, 981 N.E.2d 671 (2013); [Jarvis v. First Resolution Mgt. Corp.](#), 2012-Ohio-5653, 983 N.E.2d 380 (Ohio Ct. App. 9th Dist. Summit County 2012), appeal allowed, 135 Ohio St. 3d 1412, 2013-Ohio-1622, 986 N.E.2d 29 (2013).
- 5 [Tiismann v. Linda Martin Homes Corp.](#), 281 Ga. 137, 637 S.E.2d 14 (2006).
- 6 [Johnson Elec. Co., Inc. v. Salce Contracting Associates, Inc.](#), 72 Conn. App. 342, 805 A.2d 735 (2002).
- 7 [ASRC Energy Services Power and Communications, LLC v. Golden Valley Elec. Ass'n, Inc.](#), 267 P.3d 1151 (Alaska 2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 274

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 274. Consumer transaction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  140 to 146(3)

West's Key Number Digest, [Consumer Credit](#)  2

Generally, determining whether a state's consumer protection act against unfair and deceptive trade practices applies to a particular transaction requires an analysis of the activity involved, the nature of the transaction, and the parties to determine whether a transaction is a personal or business transaction.¹ State consumer protection statutes do not apply to strictly private transactions absent a showing that the transactions are undertaken in the course of trade or business² but apply only to transactions that involve a consumer relationship,³ a consumer transaction,⁴ a business practice,⁵ or commercial dealings and a purchase.⁶

CUMULATIVE SUPPLEMENT

Cases:

Radiology practice's challenge to automobile insurer's denial of reimbursement for work performed by radiology technicians, did not allege consumer-oriented conduct that injured practice, as required to state a consumer protection claim under New York General Business Law; insurer's denial of claims was directed not at the consumers of medical services, but at practice, even if insurer failed to inform consumers about potential denial of claims, such failure was not the cause of injury to practice, and theory that but for insurer's failure to inform consumers, consumers might have taken out policies with a different insurer,

which would not have denied reimbursement, was not pleaded and was mere counterfactual speculation. [N.Y. General Business Law § 349. Precision Imaging of New York, P.C. v. Allstate Insurance Company](#), 263 F. Supp. 3d 471 (S.D. N.Y. 2017).

To prove that an act or practice was "consumer-oriented," as required to state a deceptive business practices claim under New York law, the plaintiff must demonstrate that the acts or practices have a broader impact on consumers at large. [N.Y. McKinney's General Business Law § 349. DeAngelis v. Corzine](#), 17 F. Supp. 3d 270 (S.D. N.Y. 2014).

Under Pennsylvania law, a "fiduciary relationship," which provides an exception to the general requirement of proving justifiable reliance for private causes of action under the Unfair Trade Practices and Consumer Protection Law (UTCPL), exists where one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side or weakness, dependence or justifiable trust, on the other. 73 P.S. § 201-9.2. [Slapikas v. First American Title Ins. Co.](#), 298 F.R.D. 285 (W.D. Pa. 2014).

Under statute allowing actions by persons injured by unfair or deceptive trade practices, the trade or commerce requirement is met when the defendant was operating in a business context at the time of its allegedly unfair or deceptive activity; this is a fact-specific, multifactor inquiry, requiring consideration of the nature of the transaction, the character of the parties and their activities, and whether the transaction was motivated by business or personal reasons. [Mass. Gen. Laws Ann. ch. 93A, § 9. UBS Financial Services, Inc. v. Aliberti](#), 483 Mass. 396, 133 N.E.3d 277 (2019).

Provider of real-time threat intelligence product that identified computers affected with viruses failed to adequately allege that customer engaged in "consumer-oriented conduct" when it marketed "real-time" products containing provider's old cyberfeeds to others, and thus provider failed to state claim against customer for false advertising that diverted sales from provider; provider and customer offered services to businesses, not individuals. [McKinney's General Business Law § 350. Bitsight Technologies, Inc. v. SecurityScorecard, Inc.](#), 143 A.D.3d 619, 40 N.Y.S.3d 375 (1st Dep't 2016).

Father of owner of rental properties, who made payments to credit repair specialist in effort to obtain loan to allow owner to avoid foreclosure lawsuits, could not recover against lender in his action for consumer fraud under Consumer Sales Practices Act against specialist, lender, and lender's employee; if claim that specialist was represented to be lender's employee was correct, transaction was not consumer transaction under Act, and exceptions did not apply, as father did not claim that specialist or employee were mortgage brokers or loan officers, and complaint failed to allege violations of Act relating to home mortgage transactions. [Ohio Rev. Code Ann. §§ 1321.35-1321.48, 1345.01\(A\), 5725.01\(A\). Hubbard v. Charter One Bank](#), 2017-Ohio-1033, 87 N.E.3d 685 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017), appeal not allowed, 151 Ohio St. 3d 1473, 2017-Ohio-9111, 87 N.E.3d 1271 (2017).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [McDermott v. Marcus, Errico, Emmer & Brooks, P.C.](#), 2013 WL 4539071 (D. Mass. 2013) (applying Massachusetts law); [Ellis v. Candia Trailers and Snow Equipment, Inc.](#), 164 N.H. 457, 58 A.3d 1164 (2012). The character of the transaction is the test for applying a remedy under the state consumer fraud act. [Princeton Healthcare System v. Netsmart New York, Inc.](#), 422 N.J. Super. 467, 29 A.3d 361 (App. Div. 2011).
- 2 [Baker v. Baptist Hosp., Inc.](#), 115 So. 3d 1123 (Fla. 1st DCA 2013); [Klaimont v. Gainsboro Restaurant, Inc.](#), 465 Mass. 165, 987 N.E.2d 1247 (2013); [Ellis v. Candia Trailers and Snow Equipment, Inc.](#), 164 N.H. 457, 58 A.3d 1164 (2012). Private contract disputes, unique to the parties, do not fall within the ambit of the statute. [North State Autobahn, Inc. v. Progressive Ins. Group Co.](#), 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012).

Informal, familial relationships and arrangements do not qualify. *Szekeres v. Szekeres*, 126 Conn. App. 829, 16 A.3d 713 (2011).

3 *Antoine v. U.S. Bank Nat. Ass'n*, 821 F. Supp. 2d 1 (D.D.C. 2010) (applying District of Columbia law); *Estate of Donald ex rel. Donald v. Kalispell Regional Medical Center*, 2011 MT 166, 361 Mont. 179, 258 P.3d 395 (2011).

4 *Heyert v. Taddese*, 431 N.J. Super. 388, 70 A.3d 680 (App. Div. 2013); *North State Autobahn, Inc. v. Progressive Ins. Group Co.*, 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012); *Anderson v. Barclay's Capital Real Estate, Inc.*, 136 Ohio St. 3d 31, 2013-Ohio-1933, 989 N.E.2d 997 (2013).

5 *Szekeres v. Szekeres*, 126 Conn. App. 829, 16 A.3d 713 (2011).

6 *Princeton Healthcare System v. Netsmart New York, Inc.*, 422 N.J. Super. 467, 29 A.3d 361 (App. Div. 2011).
A direct sale to a consumer is not required. *Alexander v. Southeastern Wholesale Corp.*, 2013 WL 5673311 (E.D. Va. 2013) (applying Virginia law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 275

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 275. Public interest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  140, 151

West's Key Number Digest, [Consumer Credit](#)  2

Some state consumer protection statutes against unfair and deceptive trade practices require that the dispute affect the public interest¹ or have a broad impact on consumers at large.²

Practice Tip:

A plaintiff may show that a deceptive commercial act or practice has affected the public interest by showing that the alleged acts were committed in the course of defendant's business, were part of a pattern or generalized course of conduct, that repeated acts were committed prior to the act involving plaintiff, that there is a real and substantial potential for repetition, and that many consumers were affected or likely to be affected.³

CUMULATIVE SUPPLEMENT

Cases:

Allegations by motor vehicle buyers that the defective monostable electronic gearshift installed in more than 800,000 vehicles sold by the manufacturer, that the defect has not effectively been remedied in at least 13,000 of those vehicles, and that the defect has produced at least 686 reports of rollaway incidents, resulting in 286 crashes, and that 68 of those incidents produced injuries satisfied the public interest requirement under the New York consumer protection statutes. [N.Y. General Business Law §§ 349, 350](#). [In re FCA US LLC Monostable Electronic Gearshift Litigation](#), 280 F. Supp. 3d 975, 94 U.C.C. Rep. Serv. 2d 188 (E.D. Mich. 2017).

Trademark infringement actions alleging only general consumer confusion do not threaten the direct harm to consumers for purposes of stating a claim under the New York statute prohibiting deceptive acts and practices; rather, injuries or harms that satisfy this standard include potential danger to the public health or safety, and thus commercial claimants under the statute must allege conduct that has significant ramifications for the public at large in order to properly state a claim. [N.Y. McKinney's General Business Law § 349](#). [Van Praagh v. Gratton](#), 993 F. Supp. 2d 293 (E.D. N.Y. 2014).

A defendant engages in "consumer-oriented activity," as required for claim under New York General Business Law provision prohibiting deceptive acts and practices in conduct of business, trade or commerce, if his actions cause any consumer injury or harm to the public interest. [N.Y. McKinney's General Business Law § 349](#). [Mayfield v. Asta Funding, Inc.](#), 95 F. Supp. 3d 685 (S.D. N.Y. 2015).

Business owner, who alleged that web developer induced him into entering a contractual relationship for web-related services when it knew it would not be able to perform the promised services, did not state claim under the Colorado Consumer Protection Act (CCPA), absent allegations that developer's conduct significantly impacted the public as actual or potential consumers of its goods, services, or property; owner's complaint alleged only his own economic loss, not any harm or potential harm to identifiable segments of the public. [Colo. Rev. Stat. Ann. § 6-1-101 et seq.](#) [Rees v. Unleaded Software, Inc.](#), 2016 CO 51, 373 P.3d 603 (Colo. 2016).

Judgment creditor failed to adequately allege that any deceptive act or practice by insurers that issued primary, umbrella, and excess insurance policies to company that contracted delivery services from judgment debtors, who drove and owned truck at time of fatal accident, was consumer oriented, and, thus, failed to state claim under deceptive acts or practices statute against insurers; judgment creditor's allegations constituted private contract dispute over insurance policy coverage, which did not affect consuming public at large. [McKinney's General Business Law § 349\(a\)](#). [Carlson v. American Intern. Group, Inc.](#), 30 N.Y.3d 288, 67 N.Y.S.3d 100, 89 N.E.3d 490 (2017).

Property owner failed to state cause of action for deceptive business practices against homeowner's insurer and engineering contractor that insurer hired to clean up oil spill on property, in connection with the oil remediation process, absent factual allegations that insurer and contractor engaged in deceptive conduct that was consumer-oriented, and had broad impact on consumers at large. [N.Y. CPLR § 3211\(a\)\(7\)](#); [N.Y. General Business Law § 349](#). [Bennett v. State Farm Fire and Casualty Company](#), 161 A.D.3d 926, 78 N.Y.S.3d 169 (2d Dep't 2018).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Lewis v. Omni Indem. Co.](#), 2013 WL 4823401 (D.S.C. 2013) (applying South Carolina law); [Eicher v. Mid America Financial Inv. Corp.](#), 275 Neb. 462, 748 N.W.2d 1 (2008).
- A nexus with a public interest is required, in the nature of an offense to public policy. [Szekeres v. Szekeres](#), 126 Conn. App. 829, 16 A.3d 713 (2011).
- 2 [North State Autobahn, Inc. v. Progressive Ins. Group Co.](#), 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012).
- 3 [Bavand v. OneWest Bank, F.S.B.](#), 176 Wash. App. 475, 309 P.3d 636 (Div. 1 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 276

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 276. Intent, willfulness, or knowledge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  [134](#), [135\(1\)](#), [135\(2\)](#), [136](#), [138](#)

As a general rule, an intent to deceive or injure is not an essential or required element of a violation of a state consumer protection statute,¹ nor that the defendant knew or should have known the nature of the conduct,² since the statute imposes strict liability when its conditions are met.³ It follows that good faith is not a defense.⁴

Some provisions require intentional or knowing behavior,⁵ or willfulness,⁶ or a knowing violation,⁷ in the sense of knowing that what is being done is false, deceptive, or unfair.⁸ The requirement of knowledge may apply even though intent is not a prerequisite, at least for proof of an unconscionable act.⁹

Intent, even when not generally required under a particular statute, may be required if the claim rests on violations of another statute.¹⁰

A defendant's derivative liability as a third person requires that the defendant act knowingly.¹¹

CUMULATIVE SUPPLEMENT

Cases:

An Unfair and Deceptive Trade Practices Act (UDTPA) action is distinct from a breach of contract action; a plaintiff must allege and prove egregious or aggravating circumstances to prevail on a UDTPA claim. [Wells Fargo Bank, N.A. v. Corneal](#), 767 S.E.2d 374 (N.C. Ct. App. 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Wigod v. Wells Fargo Bank, N.A.](#), 673 F.3d 547 (7th Cir. 2012) (applying Illinois law); [CitiMortgage, Inc. v. Coolbeth](#), 147 Conn. App. 183, 81 A.3d 1189 (2013); [Capital Resources, LLC v. Chelda, Inc.](#), 735 S.E.2d 203 (N.C. Ct. App. 2012), review dismissed, cert. denied, 736 S.E.2d 191 (N.C. 2013).
- 2 [Quinn v. Walgreen Co.](#), 958 F. Supp. 2d 533 (S.D. N.Y. 2013) (applying New York law); [Heyert v. Taddese](#), 431 N.J. Super. 388, 70 A.3d 680 (App. Div. 2013).
- 3 [Paulus v. Bob Lynch Ford, Inc.](#), 139 Cal. App. 4th 659, 43 Cal. Rptr. 3d 148 (6th Dist. 2006); [Bosland v. Warnock Dodge, Inc.](#), 197 N.J. 543, 964 A.2d 741 (2009).
- 4 [Estate of Hurst ex rel. Cherry v. Moorehead I, LLC](#), 748 S.E.2d 568 (N.C. Ct. App. 2013).
- 5 [Martinez v. Best Buy Co., Inc.](#), 2012 UT App 186, 283 P.3d 521 (Utah Ct. App. 2012), cert. denied, 293 P.3d 376 (Utah 2012).
- 6 [Dana v. Heartland Management Co., Inc.](#), 48 Kan. App. 2d 1048, 301 P.3d 772 (2013).
- 7 [Two Moms and a Toy, LLC v. International Playthings, LLC](#), 898 F. Supp. 2d 1213 (D. Colo. 2012) (applying Colorado law); [Garber v. STS Concrete Co., L.L.C.](#), 2013-Ohio-2700, 991 N.E.2d 1225 (Ohio Ct. App. 8th Dist. Cuyahoga County 2013).
- 8 [Reid v. Unilever U.S., Inc.](#), 81 U.C.C. Rep. Serv. 2d 305 (N.D. Ill. 2013) (applying Alabama law).
- 9 § 282.
- 10 [Mickens v. Ford Motor Co.](#), 900 F. Supp. 2d 427 (D.N.J. 2012) (applying New Jersey law); [Capital Resources, LLC v. Chelda, Inc.](#), 735 S.E.2d 203 (N.C. Ct. App. 2012), review dismissed, cert. denied, 736 S.E.2d 191 (N.C. 2013).
- 11 [Belmont v. MB Inv. Partners, Inc.](#), 708 F.3d 470 (3d Cir. 2013) (applying Pennsylvania law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 277

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 277. Negligence or recklessness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  136

A violation of a state consumer protection statute may, in some jurisdictions, be predicated on negligence without knowledge or intent,¹ but other jurisdictions reject mere negligence as insufficient² or require gross negligence.³ Under other provisions, the act need not rise to the level of gross negligence⁴ or even negligence to constitute an unfair or deceptive trade act.⁵

A showing of reckless indifference is generally not required to show deceptive practices or fraud.⁶

CUMULATIVE SUPPLEMENT

Cases:

Consumers sufficiently alleged that manufacturer of dog food products made express misrepresentations, so as to state claims for negligent misrepresentation and violations of California's Consumer Legal Remedies Act (CLRA), California's False Advertising Law (FAL), and California's Unfair Competition Law (UCL); manufacturer's claim that food was "undoubtedly safe," or "safe" and "pure," was neither objectively true nor subjective opinion about products, and these were measurable claims that consumers sought to prove were false. [Cal. Bus. & Prof. Code §§ 17200, 17500](#); [Cal. Civ. Code § 1770\(a\)](#). [Zeiger v. WellPet LLC](#), 304 F. Supp. 3d 837, 94 U.C.C. Rep. Serv. 2d 833 (N.D. Cal. 2018).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Fayne v. Vincent](#), 301 S.W.3d 162 (Tenn. 2009).
- 2 [Paradigm BioDevices, Inc. v. Viscogliosi Bros., LLC](#), 842 F. Supp. 2d 661 (S.D. N.Y. 2012) (applying Massachusetts law).
- 3 [Sparks v. Re/Max Allstar Realty, Inc.](#), 55 S.W.3d 343 (Ky. Ct. App. 2000).
- 4 [Streber v. Hunter](#), 221 F.3d 701, 55 Fed. R. Evid. Serv. 376 (5th Cir. 2000) (applying Texas law).
- 5 [Mango v. Pierce-Coombs](#), 370 N.J. Super. 239, 851 A.2d 62 (App. Div. 2004); [Hacker v. Natl. College of Business & Technology](#), 186 Ohio App. 3d 203, 2010-Ohio-380, 927 N.E.2d 38, 257 Ed. Law Rep. 803 (2d Dist. Montgomery County 2010).
- 6 [In re Enron Corp. Securities, Derivative & ERISA Litigation](#), 623 F. Supp. 2d 798 (S.D. Tex. 2009) (applying Texas law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 278

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 278. Unfair acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1)

Under a state consumer fraud, deceptive practices, or unfair trade practices act, the unfairness of the act or practice is an essential element of an actionable violation under one prong of the statute.¹ Deceptive and unfair practices are distinct lines of inquiry under some states' consumer acts such that while a practice may be both deceptive and unfair,² it may be unfair without being deceptive.³ A plaintiff may recover against a defendant for an unfair practice as opposed to deceptive conduct.⁴

An act is "unfair" if it is offensive to public policy or if it is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.⁵ Additional tests of unfairness look to whether the practice, without necessarily having been previously considered unlawful, offends public policy as established by statutes, the common law, or otherwise within at least the penumbra of some established concept of unfairness.⁶

By some statutes, what constitutes an unfair trade practice is not specifically defined in the act but is determined on a case-by-case basis.⁷

There is nothing unfair about freely entering a transaction on the open market, and when transacting parties willingly and honestly negotiate a transaction, generally the transaction is not unfair.⁸

One significant demonstration of unfair conduct involves a party engaging in conduct that manifests an inequitable assertion of power or position.⁹

CUMULATIVE SUPPLEMENT

Cases:

Court may find unfairness under the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) even if the claim does not satisfy all three of the unfairness criteria. 815 Ill. Comp. Stat. Ann. 505/1 et seq. *Benson v. Fannie May Confections Brands, Inc.*, 944 F.3d 639 (7th Cir. 2019).

Genuine issue of material fact existed as to whether consumers actually relied on automobile manufacturer's failure to disclose alleged rear suspension defect when purchasing automobile, precluding summary judgment on consumers' fraudulent omission claims against manufacturer under California's Consumers Legal Remedies Act and California's Unfair Competition Law. *West's Ann.Cal.Civ.Code* § 1770(a); *West's Ann.Cal.Bus. & Prof.Code* § 17200. *Daniel v. Ford Motor Co.*, 806 F.3d 1217 (9th Cir. 2015).

Only when a manufacturer has a specific obligation to disclose a defect to a purchaser can a purchaser allege actionable fraud under the California Consumer Legal Remedies Act (CLRA) and the Unfair Competition Law (UCL) statutes. *West's Ann.Cal.Bus. & Prof.Code* § 17200 et seq.; *West's Ann.Cal.Civ.Code* § 1750 et seq. *Falco v. Nissan North America Inc.*, 96 F. Supp. 3d 1053 (C.D. Cal. 2015), motion to certify appeal denied, 2015 WL 3498254 (C.D. Cal. 2015).

An Illinois Consumer Fraud Deceptive Business Practices Act (ICFA) claim requires: (1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in a course of conduct involving trade or commerce, and (4) actual damage to the plaintiff that is (5) a result of the deception. S.H.A. 815 ILCS 505/1 et seq. *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919 (C.D. Cal. 2015).

The unlawful prong of California's Unfair Competition Law (UCL) borrows violations of other laws and treats them as unlawful practices; it proscribes anything that can properly be called a business practice and that at the same time is forbidden by law. *West's Ann.Cal.Bus. & Prof.Code* § 17200. *McVicar v. Goodman Global, Inc.*, 1 F. Supp. 3d 1044, 82 U.C.C. Rep. Serv. 2d 804 (C.D. Cal. 2014).

The lodestone of an unfair or deceptive trade practices claim under Massachusetts law claim is whether the defendant's actions would raise an eyebrow of someone inured to the rough and tumble of the world of commerce. *M.G.L.A. c. 93A, § 11. NExTT Solutions, LLC v. XOS Technologies, Inc.*, 113 F. Supp. 3d 450 (D. Mass. 2015).

Where, as here, a business seeks relief under Massachusetts trade regulation statute that provides for damages for unfair trade practices, courts apply a stricter standard than it would for individual consumers in terms of what constitutes unfair or deceptive conduct. *M.G.L.A. c. 93A, § 11. Full Spectrum Software, Inc. v. Forte Automation Systems, Inc.*, 100 F. Supp. 3d 50 (D. Mass. 2015).

A claim for damages under the Washington Consumer Protection Act (CPA) requires a plaintiff to demonstrate: (1) an unfair or deceptive act or practice; (2) occurring in the conduct of trade or commerce; (3) which impacts the public interest; (4) an injury to business or property; and (5) a causal link between the injury and the deceptive act or practice. WAC 284–30–330; *West's RCWA* 19.86.090, 19.86.170. *Hell Yeah Cycles v. Ohio Sec. Ins. Co.*, 16 F. Supp. 3d 1224 (E.D. Wash. 2014).

Under Washington law, defendant's act or practice is per se unfair or deceptive under Consumer Protection Act (CPA) if plaintiff shows it violates statute declaring conduct to be unfair or deceptive act or practice in trade or commerce. *West's RCWA* 19.86.020, 19.86.090. *Hard 2 Find Accessories, Inc. v. Amazon.com, Inc.*, 58 F. Supp. 3d 1166 (W.D. Wash. 2014).

To establish a prima facie Unfair and Deceptive Trade Practices Act (UDTPA) claim, a plaintiff must show that: (1) the defendant committed an unfair or deceptive act or practice; (2) the action in question was in or affecting commerce; and (3) the act proximately caused injury to the plaintiff. [Wells Fargo Bank, N.A. v. Corneal, 767 S.E.2d 374 \(N.C. Ct. App. 2014\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547 \(7th Cir. 2012\) \(applying Illinois law\); CitiMortgage, Inc. v. Coolbeth, 147 Conn. App. 183, 81 A.3d 1189 \(2013\); State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 \(Iowa 2013\).](#)
- 2 [§ 280.](#)
- 3 [State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 \(Iowa 2013\); Klem v. Washington Mut. Bank, 176 Wash. 2d 771, 295 P.3d 1179 \(2013\).](#)
- 4 [Aliano v. Ferriss, 2013 IL App \(1st\) 120242, 370 Ill. Dec. 392, 988 N.E.2d 168 \(App. Ct. 1st Dist. 2013\), appeal denied, 374 Ill. Dec. 562, 996 N.E.2d 9 \(Ill. 2013\); Klem v. Washington Mut. Bank, 176 Wash. 2d 771, 295 P.3d 1179 \(2013\).](#)
- 5 [Stack v. Abbott Laboratories, Inc., 2013 WL 5726249 \(M.D. N.C. 2013\) \(applying North Carolina law\); Bahringer v. ADT Sec. Services, Inc., 942 F. Supp. 2d 585 \(D.S.C. 2013\) \(applying South Carolina law\); Aliano v. Ferriss, 2013 IL App \(1st\) 120242, 370 Ill. Dec. 392, 988 N.E.2d 168 \(App. Ct. 1st Dist. 2013\), appeal denied, 374 Ill. Dec. 562, 996 N.E.2d 9 \(Ill. 2013\).](#)
- 6 [CitiMortgage, Inc. v. Coolbeth, 147 Conn. App. 183, 81 A.3d 1189 \(2013\).](#)
- 7 [In re Ross, 478 B.R. 715 \(Bankr. W.D. N.C. 2012\) \(applying North Carolina law\); Hardy v. Easterling, 113 So. 3d 1178 \(La. Ct. App. 2d Cir. 2013\).](#)
- 8 [Bumpers v. Community Bank of Northern Virginia, 747 S.E.2d 220 \(N.C. 2013\).](#)
- 9 [In re McClendon, 488 B.R. 876 \(Bankr. E.D. N.C. 2013\) \(applying North Carolina law\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 279

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 279. Unfair acts or practices—Unfair competition

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1)

Under a state consumer act targeting unfair competition, "unfair competition" may be defined as any unlawful business act or practice,¹ but a business practice may be "unfair" even if not otherwise proscribed by statute as long as the practice is not expressly authorized by law.²

Practice Tip:

Under alternative statutory prongs of unfair competition, the proscribed conduct may be that which is unlawful, unfair, or fraudulent, as written in the disjunctive, establishing three varieties of unfair competition.³ Thus, a practice is prohibited as unfair even if not unlawful, and vice versa.⁴

Unfair competition denotes conduct contrary to honest practice in industrial or commercial matters.⁵ A business practice is unfair competition when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers; the public policy which is a predicate to the action must be "tethered" to specific constitutional, statutory, or regulatory provisions.⁶

CUMULATIVE SUPPLEMENT

Cases:

A business act or practice is "unlawful" under California's unfair competition law if it violates a rule contained in some other state or federal statute. [West's Ann.Cal.Bus. & Prof.Code § 17200](#). [Sandoz Inc. v. Amgen Inc.](#), 137 S. Ct. 1664 (2017).

Coverage of California's Unfair Competition Law (UCL) is sweeping, embracing anything that can properly be called a business practice and at the same time is forbidden by law. [Cal. Bus. & Prof. Code § 17200](#). [Warner v. Tinder Inc.](#), 105 F. Supp. 3d 1083 (C.D. Cal. 2015).

A business practice may be deemed fraudulent in the context of California's unfair competition law (UCL) if the public is likely to be deceived. [West's Ann.Cal.Bus. & Prof.Code § 17200](#). [Meixner v. Wells Fargo Bank, N.A.](#), 101 F. Supp. 3d 938 (E.D. Cal. 2015).

California Uniform Trade Secrets Act (CUTSA) superseded employer's claim against former employees and competitor for violation of Unfair Competition Law (UCL); claim was premised on employees' theft of confidential and proprietary trade secret information and use of that information to induce employer's clients to conduct business with competitor instead. [Cal. Bus. & Prof. Code § 17200](#); [Cal. Civ. Code § 3426.7](#). [Albert's Organics, Inc. v. Holzman](#), 445 F. Supp. 3d 463 (N.D. Cal. 2020).

Seller of packaged cookies did not violate California's Sherman Law by selling cookies that contained partially hydrogenated oil (PHO) and, thus, did not commit unlawful business practices under California's Unfair Competition Law (UCL); since use of PHO was not prohibited by federal law during class period, seller could not have violated portion of Sherman Law that adopted federal law, and Sherman Law could not independently prohibit use of PHO because federal law would preempt such conclusion. [Cal. Bus. & Prof. Code § 17200](#); [Cal. Health & Safety Code § 110100](#). [Backus v. Biscamerica Corporation](#), 378 F. Supp. 3d 849 (N.D. Cal. 2019).

Independent laws cannot be borrowed, as the predicate for a claim under California's Unfair Competition Law (UCL) prohibiting unlawful business practices, where those laws provide a safe harbor for the challenged conduct or otherwise bar enforcement of the relevant statutory provision. [Cal. Bus. & Prof. Code § 17200](#). [Newton v. American Debt Services, Inc.](#), 75 F. Supp. 3d 1048 (N.D. Cal. 2014).

A plaintiff may bring a claim under California's Unfair Competition Law (UCL), based on a fraudulent act or practice, if the defendant's conduct is likely to deceive. [Cal. Bus. & Prof.Code § 17200](#). [Langan v. United Services Automobile Association](#), 69 F. Supp. 3d 965 (N.D. Cal. 2014).

In determining whether a business practice is "unfair" under California Unfair Competition Law (UCL), court balances the impact on the alleged victim against the reasons, justifications, and motives of the alleged wrongdoer. [Cal. Bus. & Prof. Code § 17200](#). [Ehret v. Uber Technologies, Inc.](#), 68 F. Supp. 3d 1121 (N.D. Cal. 2014).

To sustain a claim under the unlawful business practices prong of California's Unfair Competition Law (UCL), plaintiff must allege facts that, if proven, would demonstrate that defendant's conduct violated another, underlying law. [Cal. Bus. & Prof. Code § 17200](#). [In re Google, Inc.Privacy Policy Litigation.](#), 58 F. Supp. 3d 968 (N.D. Cal. 2014).

Mobile nuclear imaging service failed to allege maintenance provider and competitor violated laws other than common law, and thus service failed to state claim under unlawful prong of California's Unfair Competition Law (UCL) in action against provider and competitor alleging they conspired to terminate provider's maintenance agreement with service while continuing to withdraw money from service. [Cal. Bus. & Prof. Code § 17200](#). [Vascular Imaging Professionals, Inc. v. Digirad Corporation](#), 401 F. Supp. 3d 1005 (S.D. Cal. 2019).

While claims that sound in fraud would generally require plaintiffs to prove reliance, plaintiffs in class action pursuing a claim under California's Unfair Competition Law (UCL) need not prove that each member of the class relied on the allegedly fraudulent misrepresentation; instead, California law only requires plaintiffs show that members of the public are likely to be deceived. [West's Ann.Cal.Bus. & Prof.Code § 17200 et seq.](#) [Algarin v. Maybelline, LLC](#), 300 F.R.D. 444 (S.D. Cal. 2014).

To state a claim for unfair competition under Florida common law a party must plead: (1) deceptive or fraudulent conduct of a competitor, and (2) likelihood of consumer confusion. [Astro Tel, Inc. v. Verizon Florida, LLC](#), 979 F. Supp. 2d 1284 (M.D. Fla. 2013).

Courts consider several factors to determine whether conduct is unfair under the Massachusetts Consumer Protection Act: (1) whether the practice is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; and (3) whether it causes substantial injury to consumers or competitors or other businessmen. [M.G.L.A. c. 93A, §§ 2, 11](#). [Brown v. Bank of America, Nat., Ass'n](#), 67 F. Supp. 3d 508 (D. Mass. 2014).

Cease and desist letter from owner of copyrighted software, prohibiting third-party servicer from accessing its property through licensee, did not have anti-competitive purpose, and therefore letter was not unfair practice under California unfair competition law, since owner did not have any obligation to grant servicer access to its property and it believed that servicer was engaging in large-scale copyright infringement. [Cal. Bus. & Prof. Code § 17200](#). [Rimini Street, Inc. v. Oracle International Corp.](#), 473 F. Supp. 3d 1158 (D. Nev. 2020).

Creditor's, trustee's, and mortgage registry operator's alleged enforcement of unconscionable loan under deed of trust and its modification would be sufficient to establish an unlawful or unfair business practice under the Unfair Competition Law (UCL). [Cal. Bus. & Prof. Code § 17200](#). [Orcilla v. Big Sur, Inc.](#), 244 Cal. App. 4th 982, 198 Cal. Rptr. 3d 715 (6th Dist. 2016), opinion modified, 2016 WL 929319 (Cal. App. 6th Dist. 2016).

Employee's claim that employer, which performed security checks on catering equipment for airplanes, violated California unfair competition law was based on allegations of unlawful violations of the state's labor and employment law governing rest and meal breaks, and thus was not preempted by the federal Airline Deregulation Act (FADA) in light of determination that rest and meal break claims were not preempted. 49 U.S.C.A. § 41713(b)(1); [Cal. Lab. Code §§ 226.7, 512\(a\)](#); [Cal. Bus. & Prof. Code § 17200 et seq.](#) [Valencia v. SCIS Air Security Corporation](#), 241 Cal. App. 4th 377, 193 Cal. Rptr. 3d 775 (2d Dist. 2015).

Prevailing plaintiffs under Unfair Competition Law (UCL) are limited to injunctive relief and restitution, but scope of UCL is broad, embracing anything that is a business practice and that at the same time is forbidden by law. [Cal. Bus. & Prof. Code § 17200 et seq.](#) [Nolte v. Cedars Sinai Medical Center](#), 236 Cal. App. 4th 1401, 187 Cal. Rptr. 3d 737 (2d Dist. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 In re Tobacco Cases II, 41 Cal. 4th 1257, 63 Cal. Rptr. 3d 418, 163 P.3d 106 (2007).
- 2 People ex rel. Dept. of Motor Vehicles v. Cars 4 Causes, 139 Cal. App. 4th 1006, 43 Cal. Rptr. 3d 513 (2d
Dist. 2006).
- 3 Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152 (9th Cir. 2012) (applying California law).
- 4 Mintz v. Mark Bartelstein and Associates Inc., 906 F. Supp. 2d 1017 (C.D. Cal. 2012) (applying California
law).
- 5 Orthoflex, Inc. v. ThermoTek, Inc., 2013 WL 6061346 (N.D. Tex. 2013) (applying Texas law).
- 6 Lueras v. BAC Home Loans Servicing, LP, 221 Cal. App. 4th 49, 163 Cal. Rptr. 3d 804 (4th Dist. 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

17 Am. Jur. 2d Consumer Protection § 280

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 280. Deceptive acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1), 136

Under a state consumer fraud, deceptive practices, or unfair trade practices act, the deceptive nature of the act or practice is an essential element of an actionable violation under one prong of the statute.¹ Deceptive and unfair practices are distinct lines of inquiry under some states' consumer acts,² such that while a practice may be both deceptive and unfair,³ it may be unfair without being deceptive.⁴

A practice is deceptive if it has the capacity or tendency to deceive⁵ or mislead consumers⁶ or is likely to mislead consumers.⁷ More specifically, a deceptive act occurs if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment; this standard requires a showing of probable, not possible, deception that is likely to cause injury to a reasonable relying consumer.⁸ A solicitation may be likely to mislead, for purposes of deception, by virtue of the net impression it creates even though the solicitation also contains truthful disclosures, if it involves information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.⁹

Under some statutes, what constitutes a deceptive trade practice is not specifically defined in the act but is determined on a case-by-case basis.¹⁰

There is nothing deceptive about freely entering a transaction on the open market, and when transacting parties willingly and honestly negotiate a transaction, generally the transaction is not deceptive.¹¹

CUMULATIVE SUPPLEMENT

Cases:

To state a claim under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), a consumer must allege: (1) a deceptive act or unfair practice, (2) causation, and (3) actual damages. [West's F.S.A. § 501.204\(1\)](#). [In re Sony Gaming Networks and Customer Data Security Breach Litigation](#), 996 F. Supp. 2d 942, 82 U.C.C. Rep. Serv. 2d 493 (S.D. Cal. 2014).

Finding that practice of failing to reduce capitalized cost by net trade-in value in violation of Consumer Leasing Act (CLA) was unfair or deceptive in violation of Florida Deceptive and Unfair Trade Practices Act (FDUTPA) was not barred by lease contract that truthfully disclosed terms about which consumer subsequently complained. Truth in Lending Act § 182, [15 U.S.C.A. § 1667a](#); [Fla. Stat. Ann. § 501.203\(3\)\(c\)](#); [12 C.F.R. § 213.4\(b\)](#). [Cox v. Porsche Financial Services, Inc.](#), 342 F. Supp. 3d 1271 (S.D. Fla. 2018).

To state a claim pursuant to the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), a plaintiff must allege a deceptive act or unfair practice, causation, and actual damages. [West's F.S.A. § 501.201 et seq.](#) [Noveshen v. Bridgewater Associates, LP](#), 47 F. Supp. 3d 1367 (S.D. Fla. 2014).

Dealer of GPS tracking devices stated claim against supplier under the Georgia Uniform Deceptive Trade Practices Act (GUDTPA); dealer alleged that, through supplier's contact with dealer's customers after their agreement ended, supplier passed off goods and services as those of another and caused likelihood of confusion as to the source of goods and services, and dealer incorporated supplier's e-mail to customer, in which supplier's employee referred to himself as "your new account manager" while also appearing to compete for the customer's business. [West's Ga.Code Ann. § 10-1-372\(a\)](#). [Iler Group, Inc. v. Discrete Wireless, Inc.](#), 90 F. Supp. 3d 1329 (N.D. Ga. 2015).

To assert a claim for unfair or deceptive practices under Massachusetts Consumer Protection Act, a plaintiff must illustrate something beyond a mere good faith dispute, failure to pay, or simple breach of contract. [Mass. Gen. Laws Ann. ch. 93A, § 1 et seq.](#) [ABC Soils, Inc. v. DRS Power Technology, Inc.](#), 386 F. Supp. 3d 107 (D. Mass. 2019).

A claim under Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) has three elements: (1) a deceptive or unfair practice; (2) causation; (3) actual damages. [West's F.S.A. § 501.204\(1\)](#). [Dzielak v. Whirlpool Corp.](#), 26 F. Supp. 3d 304 (D.N.J. 2014).

Term "natural" used by cigarette manufacturer in its brand name and in advertising its cigarettes would not plausibly mislead a reasonable consumer into believing that tobacco in its cigarettes was less processed than tobacco in other cigarettes, and thus manufacturer was not liable to consumers on such theory under unfair and deceptive practices laws of California, Florida, Illinois, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, Ohio, and Washington, where a reasonable consumer would know that tobacco undergoes engineering processes before being sold in cigarettes and use of term "natural" as a descriptor did not say anything about the engineering process used. [N.C. Gen. Stat. Ann. § 75-1.1](#); [N.J. Stat. Ann. § 56:8-1](#); [N.M. Stat. Ann. §§ 57-12-3, 57-12-4](#); [N.Y. General Business Law § 349\(a\)](#); [Cal. Bus. & Prof. Code §§ 17200, 17500](#); [Cal. Civ. Code § 1770](#); [Fla. Stat. Ann. § 501.204](#); [815 Ill. Comp. Stat. Ann. 505/2](#); [Mass. Gen. Laws Ann. ch. 93A, § 2\(a\)](#); [Mich. Comp. Laws Ann. § 445.903](#); [Ohio Rev. Code Ann. § 1345.02\(A\)](#); [Wash. Rev. Code Ann. § 19.86.020](#). [In re Santa Fe Natural Tobacco Company Marketing & Sales Practices and Products Liability Litigation](#), 288 F. Supp. 3d 1087 (D.N.M. 2017).

Marketing company that provided services to Navy did not engage in misrepresentations indicating its contractual relationship with subcontractor that supplied mobile aircraft simulators used in Navy recruitment, or its successor in interest, would continue indefinitely, as required to support claim that company violated the North Carolina Unfair and Deceptive Trade Practices Act (UDTPA); company provided subcontractor and successor with short-term purchase orders, which were subject to cancellation by Navy at any time, so while company might have made positive comments or vague statements about future expectations,

since a written purchase order was required for all work, subcontractor and successor had no expectation of future work until purchase order was issued. [N.C. Gen. Stat. Ann. § 75-1.1. Topshelf Management, Inc. v. Campbell-Ewald Company, 280 F. Supp. 3d 788 \(M.D. N.C. 2017\).](#)

Under the Ohio Consumer Sales Practice Act (CSPA), a "deceptive act" is one that has the tendency or capacity to mislead consumers concerning a fact or circumstance material to a decision to purchase the product or service offered for sale; a deceptive act has the likelihood of inducing a state of mind in the consumer that is not in accord with the facts. [Ohio R.C. § 1345.01. Risner v. Regal Marine Industries, Inc., 8 F. Supp. 3d 959 \(S.D. Ohio 2014\).](#)

Wine companies' inclusion of safe harbor warning that alcohol may increase cancer risk and can cause birth defects during pregnancy was complete defense to any claims under Unfair Competition Law (UCL), Consumer Legal Remedies Act (CLRA), and False Advertising Law (FAL) regarding failure to disclose purportedly unsafe levels of inorganic arsenic in wine. [Cal. Bus. & Prof. Code §§ 17200 et seq., 17500; Cal. Civ. Code § 1750 et seq.; Cal. Health & Safety Code § 25249.5 et seq. Charles v. Sutter Home Winery, Inc., 23 Cal. App. 5th 89, 232 Cal. Rptr. 3d 513 \(2d Dist. 2018\), review filed, \(June 18, 2018\).](#)

A broken promise, standing alone, is not enough to establish an unfair and deceptive trade practices (UDTP) claim, unless the evidence shows the promisor intended to break its promise at the time that it made the promise. [N.C. Gen. Stat. Ann. § 75-1.1. Hills Machinery Company, LLC v. Pea Creek Mine, LLC, 828 S.E.2d 709 \(N.C. Ct. App. 2019\).](#)

With regard to an unfair or deceptive trade practices claim, to prove deception, while it is not necessary to show fraud, bad faith, deliberate or knowing acts of deception, or actual deception, a plaintiff must, nevertheless, show that the acts complained of possessed the tendency or capacity to mislead, or created the likelihood of deception. West's [N.C.G.S.A. § 75-1.1. Wells Fargo Bank, N.A. v. Corneal, 767 S.E.2d 374 \(N.C. Ct. App. 2014\).](#)

Statements made by employee of employee-placement firm, indicating that firm performed "background checks," did not constitute misrepresentation that firm would conduct full criminal background checks and, thus, did not violate Deceptive Trade Practices Act (DTPA); document providing general conditions of assignment stated that firm conducted reference checks and stated firm did not conduct a criminal background check, and firm's employee did not state that firm would run criminal background check and, thus, made no misrepresentation about any contract or service benefit or about characteristics of firm's services. [Tex. Bus. & C. Code § 17.46\(b\)\(5\). Ryan Construction Services, LLC v. Robert Half International, Inc., 541 S.W.3d 294 \(Tex. App. Houston 14th Dist. 2017\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Degutis v. Financial Freedom, LLC, 2013 WL 5705438 \(M.D. Fla. 2013\) \(applying Florida law\); Landmark Inv. Group, LLC v. Calco Const. and Development Co., 141 Conn. App. 40, 60 A.3d 983 \(2013\); Bumpers v. Community Bank of Northern Virginia, 747 S.E.2d 220 \(N.C. 2013\).](#)
- 2 [Aliano v. Ferriss, 2013 IL App \(1st\) 120242, 370 Ill. Dec. 392, 988 N.E.2d 168 \(App. Ct. 1st Dist. 2013\), appeal denied, 374 Ill. Dec. 562, 996 N.E.2d 9 \(Ill. 2013\); State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 \(Iowa 2013\).](#)
- 3 [State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 \(Iowa 2013\).](#)
- 4 [§ 278.](#)
- 5 [Johnson v. MetLife Bank, N.A., 883 F. Supp. 2d 542 \(E.D. Pa. 2012\) \(applying Pennsylvania law\); Bahringer v. ADT Sec. Services, Inc., 942 F. Supp. 2d 585 \(D.S.C. 2013\) \(applying South Carolina law\).](#)
- 6 [Fikri v. Best Buy, Inc., 2013-Ohio-4869, 1 N.E.3d 484 \(Ohio Ct. App. 12th Dist. Warren County 2013\).](#)

- 7 Degutis v. Financial Freedom, LLC, 2013 WL 5705438 (M.D. Fla. 2013) (applying Florida law); State ex
rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 (Iowa 2013).
- 8 Degutis v. Financial Freedom, LLC, 2013 WL 5705438 (M.D. Fla. 2013) (applying Florida law).
- 9 State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 (Iowa 2013).
- 10 Haygood v. Dies, 127 So. 3d 1008 (La. Ct. App. 2d Cir. 2013).
- 11 Bumpers v. Community Bank of Northern Virginia, 747 S.E.2d 220 (N.C. 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

17 Am. Jur. 2d Consumer Protection § 281

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 281. Fraudulent acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1), 136

Under a state consumer fraud, deceptive practices, or unfair trade practices act, the fraudulent nature of the act or practice is an essential element of an actionable violation under one prong of the statute.¹ To recover on this basis, the plaintiff must prove fraud,² but such statutes are not limited to fraud³ and apply to any act that is unfair or deceptive to consumers.⁴ In other words, while the statutes address practices or acts broader than fraud, they nonetheless include fraud within their ambit.⁵

By one statute, the consumer fraud act requires proof of additional common law fraud elements in a claim of concealment, suppression, or omission of a material fact.⁶

CUMULATIVE SUPPLEMENT

Cases:

Plaintiffs cannot manufacture a Louisiana Unfair Trade Practices Act (LUTPA) violation by simply adding the words "deceit" and "misrepresentation" to their breach of contract claim. [LSA-R.S. 51:1405. Nola Fine Art, Inc. v. Ducks Unlimited, Inc.](#), 88 F. Supp. 3d 602 (E.D. La. 2015).

Online travel companies' practice of bundling of taxes with other amounts so that amounts of taxes paid for booking and paying for hotel room reservation was not itemized for consumers did not rise to level of rascality necessary for it to constitute an

unfair or deceptive act or practice within meaning of the Consumer Protection Act (CPA), absent evidence that companies acted with fraudulent intent or that their business practices caused any injury to consumers. [N.H. Rev. Stat. Ann. § 358-A:2](#). [State v. Priceline.com, Incorporated](#), 206 A.3d 333 (N.H. 2019).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Miller v. Ghirardelli Chocolate Co.](#), 912 F. Supp. 2d 861 (N.D. Cal. 2012) (applying California law); [Johnson v. MetLife Bank, N.A.](#), 883 F. Supp. 2d 542 (E.D. Pa. 2012) (applying Pennsylvania law); [Hardy v. Easterling](#), 113 So. 3d 1178 (La. Ct. App. 2d Cir. 2013); [Bumpers v. Community Bank of Northern Virginia](#), 747 S.E.2d 220 (N.C. 2013).
- 2 [Roberts v. American Bank & Trust Co., Inc.](#), 835 F. Supp. 2d 183 (E.D. La. 2011) (applying Louisiana law).
- 3 [Roopchan v. ADT Sec. Sys., Inc.](#), 781 F. Supp. 2d 636 (E.D. Tenn. 2011) (applying Tennessee law).
- 4 §§ 278 to 280.
- 5 [Bumpers v. Community Bank of Northern Virginia](#), 747 S.E.2d 220 (N.C. 2013).
- 6 [State ex rel. Miller v. Vertrue, Inc.](#), 834 N.W.2d 12 (Iowa 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 282

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 282. Unconscionable acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1), 136

Under a state consumer fraud, deceptive practices, or unfair trade practices act, the unconscionable nature of the act or practice is an essential element of an actionable violation under one prong of the statute.¹ The unconscionability standard may be applied as an aggravating factor in establishing a consumer fraud claim.²

The statutes prohibit unconscionable acts and practices and not simply unconscionable outcomes.³ Some jurisdictions add the requirement that the unconscionable act be a knowing one, although intent to deceive is not required,⁴ while other jurisdictions do not require intent⁵ or knowledge for unconscionability.⁶

An unconscionable act requires both deception and unequal bargaining power⁷ and engaging in conduct that lacks good faith, honesty in fact, and fair dealing.⁸ Unconscionable acts or practices relate to a supplier manipulating a consumer's understanding of the nature of the transaction at issue.⁹ By one standard, proof of an unconscionable action or course of action requires the plaintiff to show that the defendant took advantage of the claimant's lack of knowledge and that the resulting unfairness was glaringly noticeable, flagrant, complete, and unmitigated.¹⁰

The defendant may be liable for an unconscionable commercial practice without also engaging in an act of fraud and without a showing of actual deception.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [McKenzie v. Wells Fargo Bank, N.A.](#), 931 F. Supp. 2d 1028 (N.D. Cal. 2013) (applying New Mexico law); [Via Christi Regional Medical Center, Inc. v. Reed](#), 314 P.3d 852 (Kan. 2013); [D'Agostino v. Maldonado](#), 216 N.J. 168, 78 A.3d 527 (2013); [Service Corp. Intern. v. Aragon](#), 268 S.W.3d 112 (Tex. App. Eastland 2008).
- 2 [Petri Paint Co., Inc. v. OMG Americas, Inc.](#), 595 F. Supp. 2d 416 (D.N.J. 2008) (applying New Jersey law).
- 3 [Via Christi Regional Medical Center, Inc. v. Reed](#), 314 P.3d 852 (Kan. 2013).
- 4 [Garber v. STS Concrete Co., L.L.C.](#), 2013-Ohio-2700, 991 N.E.2d 1225 (Ohio Ct. App. 8th Dist. Cuyahoga County 2013).
- 5 [Vagias v. Woodmont Properties, L.L.C.](#), 384 N.J. Super. 129, 894 A.2d 68 (App. Div. 2006); [Service Corp. Intern. v. Aragon](#), 268 S.W.3d 112 (Tex. App. Eastland 2008).
- 6 [Curtis Lumber Co., Inc. v. Louisiana Pacific Corp.](#), 618 F.3d 762 (8th Cir. 2010) (applying Arkansas law).
- 7 [Via Christi Regional Medical Center, Inc. v. Reed](#), 314 P.3d 852 (Kan. 2013).
- 8 [D'Agostino v. Maldonado](#), 216 N.J. 168, 78 A.3d 527 (2013).
- 9 [Fikri v. Best Buy, Inc.](#), 2013-Ohio-4869, 1 N.E.3d 484 (Ohio Ct. App. 12th Dist. Warren County 2013).
- 10 [Service Corp. Intern. v. Aragon](#), 268 S.W.3d 112 (Tex. App. Eastland 2008).
- 11 [Wozniak v. Pennella](#), 373 N.J. Super. 445, 862 A.2d 539 (App. Div. 2004).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 283

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

2. Essential Elements or Prerequisites for Application

§ 283. Reliance and materiality

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  135(1), 136

Under state consumer protection statutes, the injured party's reasonable reliance,¹ or justifiable reliance is not an element of the claim.²

The materiality of an alleged misrepresentation or deception is a required element,³ and the matter misrepresented must be something of importance.⁴ The materiality element is a matter distinct from the requirement that the matter be one of public interest impact, focusing instead on the capacity to deceive rather than the actual impact of the deception.⁵

The measure of materiality is objective, looking either to the action of a reasonable person⁶ or of a reasonable consumer acting reasonably under the circumstances,⁷ or in some jurisdictions, the public, including unwary and unthinking consumers,⁸ but it is not an individualized test of the injured party's action.⁹

A subjective test may be used if the seller knows that the consumer, because of some peculiarity, is particularly susceptible to an omission or misrepresentation.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Under California's Consumer Legal Remedies Act (CLRA), there are four circumstances in which an obligation to disclose may arise: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [West's Ann.Cal.Civ.Code § 1750 et seq. Avedisian v. Mercedes-Benz USA, LLC, 43 F. Supp. 3d 1071 \(C.D. Cal. 2014\).](#)

Conduct that is likely to mislead a reasonable consumer violates California's Consumer Legal Remedies Act (CLRA); a "reasonable consumer" is an ordinary consumer acting reasonably under the circumstances, who is not versed in the art of inspecting and judging a product, or in the process of its preparation or manufacture. [West's Ann.Cal.Civ.Code § 1770\(a\). Asghari v. Volkswagen Group of America, Inc., 42 F. Supp. 3d 1306 \(C.D. Cal. 2013\).](#)

To establish the causal nexus between the omission and a plaintiff's harm, in an action asserting claims under California's Unfair Competition Law (UCL) and California's Consumer Legal Remedies Act (CLRA), a plaintiff must plead that she would not have purchased the product or service at issue if she had known the material fact that defendant allegedly omitted. [Cal. Civ. Code §§ 1770, 1780\(a\); Cal. Bus. & Prof. Code §§ 17200, 17204. Doe v. SuccessfulMatch.com, 70 F. Supp. 3d 1066 \(N.D. Cal. 2014\).](#)

Consumers alleged reliance, as was required to support claims in class action against fast food restaurant chain under Georgia Fair Business Practice Act (GFBPA) based on, inter alia, chain purportedly misrepresenting that data systems abided by and had sponsorship, approval, or certification by Payment card Industry Security Standards Council, arising from third party hackers breaching chain's credit card point of sale machines and retrieving consumers' personal information, even though chain argued consumers did not identify a specific statement it made; consumers specifically alleged that use of their payment cards at chain's restaurants was a result of reliance on chain's misrepresentations and omissions regarding data security and direct result of their reliance upon chain to be truthful, and GFBPA stated that an omission was a basis for an action. [Ga. Code Ann. §§ 10-1-393\(a\), 10-1-393\(b\)\(2\), 10-1-393\(b\)\(3\), 10-1-393\(b\)\(5\), 10-1-399. In re Arby's Restaurant Group Inc. Litigation, 317 F. Supp. 3d 1222 \(N.D. Ga. 2018\).](#)

Consumer's complaint adequately alleged that deceptive conduct by manufacturer of diaper disposal product proximately caused his damages, as required to state claim against manufacturer under Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA), where complaint claimed that consumer personally saw misrepresentations on product's packaging, was deceived by them, and was financially damaged as a result. [815 ILCS § 505/1 Muir v. Playtex Products, LLC, 983 F. Supp. 2d 980 \(N.D. Ill. 2013\).](#)

Consumer, who purchased extended service plan for refrigerator, sufficiently alleged that administrator and provider of plan, which did not provide repairs during purported coverage period, engaged in deceptive practice, with intent that consumer would rely on deception, and that deception proximately harmed consumer, as necessary to plead violation of section of Illinois Consumer Fraud and Deceptive Practices Act (ICFA) governing deceptive practices; consumer alleged that although plan purported to begin on date of product purchase, actual policy of administrator and provider was not to provide service for products that failed during original warranty, that they misled consumer into purchasing plan, and that as direct result, consumer had purchased plan when she would not have otherwise. [815 Ill. Comp. Stat. Ann. 505/2. Jett v. Warrantech Corporation, 436 F. Supp. 3d 1170 \(S.D. Ill. 2020\).](#)

Reliance is not required for a claim under New York statute prohibiting deceptive practices in business, trade, or commerce, although the plaintiff must show that the materially deceptive act caused the injury. [N.Y. General Business Law § 349. Cummings v. FCA US LLC, 401 F. Supp. 3d 288, 99 U.C.C. Rep. Serv. 2d 854 \(N.D. N.Y. 2019\).](#)

The question of whether a misrepresentation or omission is material, as required to support a claim under the consumer protection statute, is generally measured by an objective standard, premised on what a reasonable person would regard as important in

making a decision. 9 V.S.A. § 2453(a). *PH West Dover Property, LLC v. Lalancette Engineers*, 2015 VT 48, 120 A.3d 1135 (Vt. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *Quinn v. Walgreen Co.*, 958 F. Supp. 2d 533 (S.D. N.Y. 2013) (applying Connecticut law); *Lueras v. BAC Home Loans Servicing, LP*, 221 Cal. App. 4th 49, 163 Cal. Rptr. 3d 804 (4th Dist. 2013).
- 2 *Makreas v. First Nat. Bank of Northern California*, 856 F. Supp. 2d 1097 (N.D. Cal. 2012) (applying California law); *Midland Funding, LLC v. Giraldo*, 39 Misc. 3d 936, 961 N.Y.S.2d 743 (Dist. Ct. 2013).
- 3 *In re Processed Egg Products Antitrust Litigation*, 851 F. Supp. 2d 867 (E.D. Pa. 2012) (applying Kansas law); *Otis-Wisher v. Fletcher Allen Health Care, Inc.*, 951 F. Supp. 2d 592 (D. Vt. 2013) (applying Vermont law); *DepoLink Court Reporting & Litigation Support Services v. Rochman*, 430 N.J. Super. 325, 64 A.3d 579 (App. Div. 2013).
- 4 *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12 (Iowa 2013); *Brummett v. Washington's Lottery*, 171 Wash. App. 664, 288 P.3d 48 (Div. 2 2012), review denied, 176 Wash. 2d 1022, 297 P.3d 707 (2013).
- 5 *McDonald v. OneWest Bank, FSB*, 929 F. Supp. 2d 1079 (W.D. Wash. 2013) (applying Washington law).
- 6 *Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 86 Fed. R. Serv. 3d 1279 (S.D. Cal. 2013) (applying California law); *Luskin's, Inc. v. Consumer Protection Div.*, 353 Md. 335, 726 A.2d 702 (1999).
- 7 *Chiste v. Hotels.com L.P.*, 756 F. Supp. 2d 382 (S.D. N.Y. 2010) (applying New York law); *Otis-Wisher v. Fletcher Allen Health Care, Inc.*, 951 F. Supp. 2d 592 (D. Vt. 2013) (applying Vermont law).
- 8 *Streber v. Hunter*, 221 F.3d 701, 55 Fed. R. Evid. Serv. 376 (5th Cir. 2000) (applying Texas law).
- 9 *Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 86 Fed. R. Serv. 3d 1279 (S.D. Cal. 2013) (applying California law).
- 10 *Carter v. Gugliuzzi*, 168 Vt. 48, 716 A.2d 17 (1998).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 284

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

3. Applicability to Particular Persons or Entities

§ 284. Merchants, sellers, and suppliers within prohibitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  140 to 143

State consumer protection statutes ordinarily designate those persons or entities that are subject to their prohibitory provisions¹ although some statutes make no requirement as to the nature or identity of the offender or violator, focusing instead on the activity or transaction.² Under some statutes, the prohibitory provisions apply to those engaged in a business, such as a merchant³ or a seller.⁴ More broadly, other statutes apply to a "person,"⁵ or "supplier."⁶

A consumer protection statute has applied to a lender,⁷ a collector of consumer debts,⁸ an insurance insolvency fund,⁹ attorneys and physicians,¹⁰ landlords,¹¹ and real estate brokers or developers.¹²

CUMULATIVE SUPPLEMENT

Cases:

New York statute prohibiting sellers in sales transactions from imposing a surcharge or swipe fee on customers who elected to pay with a credit card did not violate the First Amendment as applied to sellers who wished to post only a single price for their goods and services and charge more than that price to credit-card customers; statute regulated a pricing practice, not speech. [U.S.C.A. Const.Amend. 1](#); N.Y.McKinney's General Business Law § 518. [Expressions Hair Design v. Schneiderman](#), 808 F.3d 118 (2d Cir. 2015).

Transactions along the distribution chain that do not involve the ultimate retail customer are not "consumer transactions" that the District of Columbia's consumer protection statute seeks to reach; rather, it is the ultimate retail transaction between the final distributor and the individual member of the consuming public that the statute covers. [D.C. Code § 28-3901\(a\)\(2\)\(B\)\(i\)](#). [In re Lidoderm Antitrust Litigation](#), 103 F. Supp. 3d 1155 (N.D. Cal. 2015).

Operator of website, which was forum where users could list properties for rent, was not seller of traveler services under Massachusetts consumer protection regulation and, thus, was not liable for unfair or deceptive trade practices under Massachusetts consumer protection statute; operator merely provided venue for others to sell or provide lodging but did not provide actual facility where people could lodge. [Mass. Gen. Laws Ann. ch. 93A, § 2\(a\)](#); [940 Mass. Code Regs. 15.02](#). [Hiam v. HomeAway.com, Inc.](#), 267 F. Supp. 3d 338 (D. Mass. 2017).

Mortgagee, to extent that it was regulated bank, was not "supplier," whose allegedly deceptive practices in connection with collection of mortgage loan could support cause of action by Chapter 13 debtor-mortgagors under the Kansas Consumer Protection Act (KCPA). [Kan. Stat. Ann. § 50-624\(1\)](#). [In re Larkin](#), 553 B.R. 428 (Bankr. D. Kan. 2016).

Collection agency's failure to obtain a license, as required by the Maryland Collection Agency Licensing Act (MCALA), did not render void judgments entered in favor of agency in debt collection actions against debtors, in the absence of a lack of fundamental jurisdiction of the courts that rendered those judgments. [Md. Code Ann., Bus. Reg. § 7-301](#). [LVNV Funding LLC v. Finch](#), 463 Md. 586, 207 A.3d 202 (2019).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Busby v. Capital One, N.A.](#), 772 F. Supp. 2d 268 (D.D.C. 2011) (applying District of Columbia law); [Osterhaus v. Toth](#), 291 Kan. 759, 249 P.3d 888 (2011).
- 2 [Princeton Healthcare System v. Netsmart New York, Inc.](#), 422 N.J. Super. 467, 29 A.3d 361 (App. Div. 2011); [Sawyer v. Robson](#), 181 Vt. 216, 2006 VT 136, 915 A.2d 1298 (2006).
- 3 [Ali v. Tolbert](#), 636 F.3d 622 (D.C. Cir. 2011) (applying District of Columbia law).
A qualifying merchant need not be the actual seller of the goods or services. [Ihebereme v. Capital One, N.A.](#), 730 F. Supp. 2d 40 (D.D.C. 2010) (applying District of Columbia law).
- 4 [Osterhaus v. Toth](#), 291 Kan. 759, 249 P.3d 888 (2011); [Benz Farm, LLP v. Cavendish Farms, Inc.](#), 2011 ND 184, 803 N.W.2d 818 (N.D. 2011).
The seller's attorney is not the seller solely based on the attorney-client relationship. [Bracht v. Grushewsky](#), 448 F. Supp. 2d 1103 (E.D. Mo. 2006) (applying Missouri law).
- 5 [State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.](#), 694 N.W.2d 518 (Iowa 2005); [George v. Al Hoyt & Sons, Inc.](#), 162 N.H. 123, 27 A.3d 697 (2011).
- 6 [Lawson v. Hale](#), 902 N.E.2d 267 (Ind. Ct. App. 2009); [Osterhaus v. Toth](#), 291 Kan. 759, 249 P.3d 888 (2011); [Anderson v. Barclay's Capital Real Estate, Inc.](#), 136 Ohio St. 3d 31, 2013-Ohio-1933, 989 N.E.2d 997 (2013).
- 7 § 295.
- 8 § 296.
- 9 [Wheatley v. Massachusetts Insurers Insolvency Fund](#), 465 Mass. 297, 988 N.E.2d 845 (2013).
- 10 §§ 288, 289.
- 11 § 294.
- 12 § 293.

17 Am. Jur. 2d Consumer Protection § 285

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

3. Applicability to Particular Persons or Entities

§ 285. Consumers or purchasers protected

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  140 to 143(2)

A.L.R. Library

[Who is a "consumer" entitled to protection of state deceptive trade practice and consumer protection acts, 63 A.L.R.5th 1](#)

Under a state deceptive trade practice act or consumer protection act, "consumer" status is a key element of a covered claim.¹ The statute does not create a right of action in favor of a seller against a purchaser since it does not define a sale in terms of "purchase" but, instead, focuses on the conduct of the seller.²

Definition:

A consumer may be defined as one who sought or acquired goods or services by purchase or lease, which goods or services form the basis of the complaint,³ or as those who purchase goods and services for personal, family, or household use.⁴

For this purpose, the term "consumer," under particular circumstances, includes—

- a lessee or tenant of residential premises.⁵
- a borrower of money to purchase goods or services.⁶
- a buyer of lender services.⁷
- a purchaser of real estate.⁸
- a purchaser of residential condominium units.⁹
- a prospective franchisee under an option agreement.¹⁰
- a buyer of discount coupons.¹¹
- a purchaser of a ticket to the Super Bowl.¹²
- a spouse of an insured as the intended third-party beneficiary.¹³
- a person seeking or acquiring attorney services.¹⁴

Under some state deceptive trade practice or consumer protection statutes, the term "consumer" includes corporations and other business associations or business entities,¹⁵ including a business competitor with a claim against another business.¹⁶ Under other statutes, the term "consumer" does not include a corporation,¹⁷ particularly in a transaction between business entities.¹⁸

CUMULATIVE SUPPLEMENT

Cases:

Customers' allegations that two retailers requested their ZIP codes in connection with consumer credit card purchases were insufficient to plead cognizable injury, as required to have standing for their putative class action against retailers, alleging retailers violated District of Columbia Consumer Identification Information Act (CII Act) and District of Columbia Consumer Protection Procedures Act (DCCPPA); customers did not allege any consequences from the request for their ZIP codes, including any invasion of privacy, increased risk of identity theft, or pecuniary or emotional injury. [D.C. Code § 28-3901 et seq.](#); [D.C. Code § 47-3151 et seq.](#) [Hancock v. Urban Outfitters, Inc.](#), 830 F.3d 511 (D.C. Cir. 2016).

Consumer failed to plausibly allege that she suffered actual damages as result of buying candy in box that disguised the large amount of empty space or slack-fill contained therein, as required to state a claim against candy manufacturer for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA), where consumer did not allege that candy she received was defective or worth less than the dollar she paid for it, but instead, she claimed that she would not have bought the

product had she known about the slack-fill and that she would receive less candy than she expected. 815 Ill. Comp. Stat. Ann. 505/1 et seq. *Stemm v. Tootsie Roll Industries, Inc.*, 374 F. Supp. 3d 734 (N.D. Ill. 2019).

Operator of adult recreational sports leagues was non-consumer and, thus, lacked standing to bring counterclaim against competitor for unfair or deceptive trade practices under Maryland Consumer Protection Act; only consumer had standing to bring claim under Act. Md. Code Ann., Com. Law § 13-301. *Baltimore Sports & Social Club, Inc. v. Sport & Social, LLC*, 228 F. Supp. 3d 544 (D. Md. 2017).

Michigan Consumer Protection Act (MCPA) did not apply to impose liability on employees of company who started competing business; employee's competing business was primarily for commercial, rather than personal, family, or household purposes. M.C.L.A. § 445.902(1)(g). *Nedschroef Detroit Corp. v. Bemas Enterprises LLC*, 106 F. Supp. 3d 874 (E.D. Mich. 2015).

To state a prima facie case under the New Jersey Consumer Fraud Act (NJCFA), a plaintiff must allege three elements: (1) unlawful conduct by the defendant; (2) an ascertainable loss by the plaintiff; and (3) a causal connection between the defendant's unlawful conduct and the plaintiff's ascertainable loss. N.J.S.A. 56:8–1 et seq. *Dzielak v. Whirlpool Corp.*, 26 F. Supp. 3d 304 (D.N.J. 2014).

Investors adequately alleged facts to support a finding that they were "consumers" under the Texas Deceptive Trade Practices Act (DTPA) by alleging that Chapter 11 debtor, a limited liability company (LLC) in the business of selling fractional interests in Texas oil and gas wells, its sole member, and others offered and sold units of real property interests and services to investors, and that investors were not merely non-operator working interest owners in a joint operating agreement. Tex. Bus. & C. Code § 17.45(4). *In re Primera Energy, LLC*, 560 B.R. 448 (Bankr. W.D. Tex. 2016).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *Stockroom, Inc. v. Dydacomp Development Corp.*, 941 F. Supp. 2d 537 (D.N.J. 2013) (applying New Jersey law); *In re Welch*, 494 B.R. 654 (Bankr. E.D. N.C. 2013) (applying North Carolina law).
- 2 *Benz Farm, LLP v. Cavendish Farms, Inc.*, 2011 ND 184, 803 N.W.2d 818 (N.D. 2011).
- 3 *Davis v. Wells Fargo Bank, N.A.*, 2013 WL 5488448 (S.D. Tex. 2013), on reconsideration, 2014 WL 585403 (S.D. Tex. 2014) (applying Texas law).
- 4 *Shema Kolainu-Hear Our Voices v. ProviderSoft, LLC*, 832 F. Supp. 2d 194 (E.D. N.Y. 2010) (applying New York law).
- 5 *Sager v. Housing Com'n of Anne Arundel County*, 855 F. Supp. 2d 524 (D. Md. 2012) (applying Maryland law); *Heyert v. Taddese*, 431 N.J. Super. 388, 70 A.3d 680 (App. Div. 2013).
- 6 *Hurd v. BAC Home Loans Servicing, LP*, 880 F. Supp. 2d 747 (N.D. Tex. 2012) (applying Texas law).
- 7 *Bank One Milwaukee v. Sanchez*, 336 Ill. App. 3d 319, 270 Ill. Dec. 642, 783 N.E.2d 217 (2d Dist. 2003).
- 8 *Stechschulte v. Jennings*, 297 Kan. 2, 298 P.3d 1083 (2013).
- 9 *Bergman v. Spruce Peak Realty, LLC*, 847 F. Supp. 2d 653 (D. Vt. 2012) (applying Vermont law).
- 10 *Carroll v. Farooqi*, 486 B.R. 718 (N.D. Tex. 2013) (applying Texas law).
- 11 *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419, 70 A.3d 544 (2013).
- 12 *Simms v. Jones*, 879 F. Supp. 2d 595 (N.D. Tex. 2012) (applying Texas law).
- 13 *Kersh v. UnitedHealthcare Ins. Co.*, 946 F. Supp. 2d 621 (W.D. Tex. 2013) (applying Texas law).
- 14 *Pucci v. Litwin*, 828 F. Supp. 1285 (N.D. Ill. 1993) (applying Illinois law).
- 15 *Tile Unlimited, Inc. v. Blanke Corp.*, 788 F. Supp. 2d 734 (N.D. Ill. 2011) (applying Illinois law); *Stockroom, Inc. v. Dydacomp Development Corp.*, 941 F. Supp. 2d 537 (D.N.J. 2013) (applying New Jersey law).

A corporation acquiring oceanfront property was a "natural person," qualifying as a "consumer." [Western Sunview Properties, LLC v. Federman](#), 338 F. Supp. 2d 1106 (D. Haw. 2004) (applying Hawaii law).

Business entities are entitled to the same rights under the state consumer fraud act as other consumers. [Rathe Salvage, Inc. v. R. Brown & Sons, Inc.](#), 184 Vt. 355, 2008 VT 99, 965 A.2d 460 (2008).

16 [Southern Service Corp. v. Excel Bldg. Services, Inc.](#), 617 F. Supp. 2d 1097 (D. Nev. 2007) (applying Nevada law); [Western Star Trucks, Inc. v. Big Iron Equipment Service, Inc.](#), 101 P.3d 1047 (Alaska 2004).

17 [In re Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation](#), 495 F. Supp. 2d 1027 (N.D. Cal. 2007) (applying Texas law).

18 [James T. Scatuorchio Racing Stable, LLC v. Walmac Stud Management, LLC](#), 941 F. Supp. 2d 807 (E.D. Ky. 2013) (applying Kentucky law); [Spirit Locker, Inc. v. EVO Direct, LLC](#), 696 F. Supp. 2d 296 (E.D. N.Y. 2010) (applying New York law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 286

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

3. Applicability to Particular Persons or Entities

§ 286. Statutory exemptions; safe harbor provisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  152

In addition to specific or express exemptions granted legislatively to certain entities,¹ such as defined "state regulated industries,"² state consumer-protection statutes ordinarily exempt conduct, actions, or transactions that are regulated by other statutes, orders, rules, or the like, or by a regulatory body or officer.³ State licensing of service providers may be sufficient for exemption,⁴ such as doctors and lawyers.⁵

A state's "safe harbor" provision under a deceptive and unfair trade practices act excludes acts or practices required or specifically permitted by federal or state law.⁶ The "safe harbor" applies only where the conduct is expressly permitted, not merely because the conduct is not expressly prohibited.⁷ The existence of a related or overlapping scheme is insufficient without a showing that the scheme affirmatively permits the practice alleged to be unfair or deceptive.⁸

Absent an express or specific approval of the contested act or practice, a state's consumer protection "safe harbor" provision does not apply⁹ even in the face of an administrative indication of "no objection."¹⁰

Caution:

Conduct unrelated to the regulation or authorization of a dealer,¹¹ licensee,¹² or service provider is not a basis for a safe harbor exemption.¹³

CUMULATIVE SUPPLEMENT

Cases:

Safe-harbor provision of the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) allows regulated actors to rely on the directions received from regulatory agencies without risk that such reliance might expose them to liability. [Vanzant v. Hill's Pet Nutrition, Inc.](#), 934 F.3d 730 (7th Cir. 2019).

Prescription opioid manufacturers, that allegedly misrepresented risk of addiction to opioids, ease of withdrawal, and improved patient functionality with long-term use, did not fall within safe harbor of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA), since manufacturers' methods of promoting and marketing opioids were outside parameters specifically authorized by state or federal law regarding opioid safety and effectiveness. [Fla. Stat. Ann. § 501.212\(1\)](#). [In re National Prescription Opiate Litigation](#), 452 F. Supp. 3d 745 (N.D. Ohio 2020).

Safe-harbor provision making Deceptive Trade Practices Act (DTPA) inapplicable to actions or transactions permitted under laws administered by various regulatory bodies should be applied according to specific-conduct rule, rather than general-activity rule, and thus it precludes claims only when the actions or transactions at issue have been specifically permitted or authorized under laws administered by a state or federal regulatory body or officer. [Ark. Code Ann. § 4-88-101\(3\)](#). [Air Evac EMS, Inc. v. USAble Mutual Insurance Company](#), 2017 Ark. 368, 533 S.W.3d 572 (2017).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Rashaw v. United Consumers Credit Union](#), 685 F.3d 739 (8th Cir. 2012), cert. denied, 133 S. Ct. 1250, 185 L. Ed. 2d 180 (2013) (applying Missouri law); [Alvarez v. Chevron Corp.](#), 656 F.3d 925, 75 U.C.C. Rep. Serv. 2d 545 (9th Cir. 2011) (applying California law).
- 2 [Hennes v. Shaw](#), 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012).
As to the exemption of the regulated insurance industry, see § 292.
- 3 [People v. Persolve, LLC.](#), 218 Cal. App. 4th 1267, 160 Cal. Rptr. 3d 841 (5th Dist. 2013), review denied, (Nov. 13, 2013); [Neighborhood Builders, Inc. v. Town of Madison](#), 142 Conn. App. 326, 64 A.3d 800 (2013), certification denied, 309 Conn. 905, 68 A.3d 660 (2013).
The other provision must actually bar the action or clearly permit the conduct. [Davis v. HSBC Bank Nevada, N.A.](#), 691 F.3d 1152 (9th Cir. 2012) (applying California law).
- 4 [Reitz v. Nationstar Mortg., LLC](#), 954 F. Supp. 2d 870 (E.D. Mo. 2013) (applying Missouri law).
- 5 §§ 288, 289.
- 6 [Degutis v. Financial Freedom, LLC](#), 2013 WL 5705438 (M.D. Fla. 2013) (applying Florida law); [DePriest v. AstraZeneca Pharmaceuticals, L.P.](#), 2009 Ark. 547, 351 S.W.3d 168 (2009).

Mere compliance with applicable federal rules is not alone sufficient. [Federal Ins. Co. v. Binney & Smith, Inc.](#), 393 Ill. App. 3d 277, 332 Ill. Dec. 448, 913 N.E.2d 43 (1st Dist. 2009).

7 [Jordan v. Paul Financial, LLC](#), 745 F. Supp. 2d 1084 (N.D. Cal. 2010) (applying California law).

8 [Aspinall v. Philip Morris, Inc.](#), 453 Mass. 431, 902 N.E.2d 421 (2009).

9 [Jamison v. Summer Infant \(USA\), Inc.](#), 778 F. Supp. 2d 900, 74 U.C.C. Rep. Serv. 2d 408 (N.D. Ill. 2011) (applying Illinois law); [Quynh Truong v. Allstate Ins. Co.](#), 2010-NMSC-009, 147 N.M. 583, 227 P.3d 73 (2010).

The approval must be official for purposes of an exemption. [Gomez-Jimenez v. New York Law School](#), 36 Misc. 3d 230, 943 N.Y.S.2d 834, 279 Ed. Law Rep. 354 (Sup 2012), order aff'd, 103 A.D.3d 13, 956 N.Y.S.2d 54, 287 Ed. Law Rep. 975, 91 A.L.R.6th 735 (1st Dep't 2012), leave to appeal denied, 20 N.Y.3d 1093, 965 N.Y.S.2d 78, 987 N.E.2d 639 (2013).

10 [In re Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practice Litigation](#), 955 F. Supp. 2d 1311, 81 U.C.C. Rep. Serv. 2d 189 (S.D. Fla. 2013) (applying Arizona and Florida law).

11 [Walker v. Wenatchee Valley Truck and Auto Outlet, Inc.](#), 155 Wash. App. 199, 229 P.3d 871 (Div. 3 2010).

12 [Robinson v. Sunshine Homes, Inc.](#), 2012 OK CIV APP 87, 291 P.3d 628 (Div. 1 2010), cert. denied, (Sept. 10, 2012).

13 [Deacon v. Pandora Media, Inc.](#), 901 F. Supp. 2d 1166 (N.D. Cal. 2012) (applying Michigan law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 287

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 287. Advertising, marketing, labeling, or branding

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  161 to 168

A.L.R. Library

[Practices Forbidden by State Deceptive Trade Practice and Consumer Protection Acts—Pyramid or Ponzi or Referral Sales Schemes](#), 48 A.L.R.6th 511

Forms

Forms relating to false statements in advertising, see Am. Jur. Pleading and Practice Forms—Advertising [[Westlaw® Search Query](#)]

In the context of advertising, marketing, labeling, or branding, state consumer protection or deceptive trade practices statutes apply, under varying circumstances, to unfair or deceptive representations or conduct,¹ omissions or nondisclosures,² misleading

or misrepresenting,³ or false or fraudulent representations to induce an obligation or sale,⁴ sufficient to deceive a substantial portion of the public,⁵ or a reasonable consumer,⁶ and causing an injury to trade or business or property.⁷ The misconduct may be in connection with an advertisement for the sale of goods⁸ or services,⁹ the representations of a salesperson,¹⁰ product labeling, branding,¹¹ or packaging.¹²

CUMULATIVE SUPPLEMENT

Cases:

To assert a claim under Wisconsin Deceptive Trade Practices Act, plaintiff must allege three elements: (1) the defendant made a representation to the public with the intent to induce an obligation; (2) that the representation was untrue, deceptive or misleading; and (3) that the representation caused the plaintiff a pecuniary loss. [W.S.A. 100.18. Thermal Design, Inc. v. American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 755 F.3d 832 \(7th Cir. 2014\).](#)

Unauthorized seller of products made and originally sold by copyright owner sufficiently stated that owner's misrepresentations regarding binding effect of software's end use licensing agreement were deceptive and material to consumers' purchasing decisions in violation of Lanham Act, on allegations that misrepresentations successfully deterred consumers from purchasing owner's goods on secondary market, seller had on information and belief lost sales of products that would have been made but for owner's false representations to consumers, that but for those representations consumers would purchase products on secondary market, and owner discouraged consumers from purchasing goods on secondary market, including by telling consumers that unopened did not necessarily mean new. Lanham Trade-Mark Act § 43, [15 U.S.C.A. § 1125. Cisco Systems, Inc. v. Beccela's Etc., LLC, 403 F. Supp. 3d 813 \(N.D. Cal. 2019\).](#)

For purposes of a claim under the Missouri Merchandising Practices Act (MMPA), where a court can conclude as a matter of law that members of the public are not likely to be deceived by the product packaging, dismissal is appropriate. [V.A.M.S. § 407.010 et seq. Kelly v. Cape Cod Potato Chip Co., 81 F. Supp. 3d 754 \(W.D. Mo. 2015\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Kekaouha-Alisa, 674 F.3d 1083 \(9th Cir. 2012\) \(applying Hawaii law\); Newly Wed Foods, Inc. v. Superior Nut Co., Inc., 26 Mass. L. Rptr. 602, 2010 WL 1178404 \(Mass. Super. Ct. 2010\); Bumpers v. Community Bank of Northern Virginia, 747 S.E.2d 220 \(N.C. 2013\).](#)
- 2 [Bias v. Wells Fargo & Co., 942 F. Supp. 2d 915 \(N.D. Cal. 2013\) \(applying California law\); Martin v. Ford Motor Co., 292 F.R.D. 252 \(E.D. Pa. 2013\) \(applying Illinois law\); Graphic Communications Local 1B Health & Welfare Fund A v. CVS Caremark Corp., 833 N.W.2d 403 \(Minn. Ct. App. 2013\).](#)
Under some state statutes, a nondisclosure is not an actionable deceptive act because it is not a representation. [Kesling v. Hubler Nissan, Inc., 997 N.E.2d 327 \(Ind. 2013\).](#)
- 3 [New Mexico v. Capital One Bank \(USA\) N.A., 2013 WL 5874318 \(D.N.M. 2013\) \(applying New Mexico law\); Robertson v. GMAC Mortg. LLC, 2013 WL 6017482 \(W.D. Wash. 2013\) \(applying Washington law\); Aliano v. Ferriss, 2013 IL App \(1st\) 120242, 370 Ill. Dec. 392, 988 N.E.2d 168 \(App. Ct. 1st Dist. 2013\), appeal denied, 374 Ill. Dec. 562, 996 N.E.2d 9 \(Ill. 2013\).](#)
- 4 [In re Horizon Organic Milk Plus DHA Omega-3 Marketing and Sales Practice Litigation, 955 F. Supp. 2d 1311, 81 U.C.C. Rep. Serv. 2d 189 \(S.D. Fla. 2013\) \(applying Arizona law\); MBS-Certified Public Accountants, LLC v. Wisconsin Bell Inc., 2013 WI App 14, 346 Wis. 2d 173, 828 N.W.2d 575 \(Ct. App. 2013\).](#)

- 5 Terrill v. Electrolux Home Products, Inc., 295 F.R.D. 671 (S.D. Ga. 2013) (applying California and Texas law); Robertson v. GMAC Mortg. LLC, 2013 WL 6017482 (W.D. Wash. 2013) (applying Washington law).
- 6 In re Kekaouha-Alisa, 674 F.3d 1083 (9th Cir. 2012) (applying Hawaii law); Fritz v. Resurgent Capital Services, LP, 955 F. Supp. 2d 163 (E.D. N.Y. 2013) (applying New York law).
The standard is a reasonable but unsophisticated customer. Sager v. Housing Com'n of Anne Arundel County, 855 F. Supp. 2d 524 (D. Md. 2012) (applying Maryland law).
- 7 Robertson v. GMAC Mortg. LLC, 2013 WL 6017482 (W.D. Wash. 2013) (applying Washington law).
The representation must induce a pecuniary loss. MBS-Certified Public Accountants, LLC v. Wisconsin Bell Inc., 2013 WI App 14, 346 Wis. 2d 173, 828 N.W.2d 575 (Ct. App. 2013).
- 8 Powers v. Guaranty RV, Inc., 229 Ariz. 555, 278 P.3d 333 (Ct. App. Div. 1 2012), review denied, (Dec. 4, 2012); Martinez v. River Park Place, LLC, 2012 IL App (1st) 111478, 366 Ill. Dec. 848, 980 N.E.2d 1207 (App. Ct. 1st Dist. 2012), appeal denied, 368 Ill. Dec. 734, 985 N.E.2d 307 (Ill. 2013); Horton v. Nelson, 252 Or. App. 611, 288 P.3d 967 (2012).
- 9 Brakke v. Economic Concepts, Inc., 213 Cal. App. 4th 761, 153 Cal. Rptr. 3d 1 (4th Dist. 2013); Duspiva v. Fillmore, 154 Idaho 27, 293 P.3d 651 (2013).
- 10 State ex rel. Miller v. Vertrue, Inc., 834 N.W.2d 12 (Iowa 2013); United Concrete & Const., Inc. v. Red-D-Mix Concrete, Inc., 2013 WI 72, 349 Wis. 2d 587, 836 N.W.2d 807 (2013).
- 11 Lieberman v. Johnson & Johnson Consumer Companies, Inc., 865 F. Supp. 2d 529 (D.N.J. 2011) (applying New Jersey law); Djarum v. Dhanraj Imports, Inc., 876 F. Supp. 2d 664 (W.D. N.C. 2012) (applying North Carolina law).
- 12 Baby Buddies, Inc. v. Toys R Us, Inc., 611 F.3d 1308 (11th Cir. 2010) (applying Florida law); Sherwin-Williams Co. v. JP Intern. Hardware, Inc., 2013 WL 6767815 (N.D. Ohio 2013) (applying Ohio law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 288

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 288. Legal services or sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  256

State consumer protection or deceptive trade practices statutes generally apply only to the business aspects of the practice of law,¹ excluding coverage of lawyers engaged in the practice of law.²

Observation:

There is authority rejecting the professional versus entrepreneurial distinction as a basis for analyzing the applicability of statutory deceptive trade practice claims against attorneys and finding that attorneys are subject to liability under such a statute, absent any inconsistency between the attorney regulatory system and the state's consumer protection act for purposes of a separation of powers analysis.³

Professional negligence or malpractice claims against lawyers are not within consumer protection or deceptive trade practices statutes,⁴ and attorney advertising does not provide a vehicle for converting a legal malpractice claim into a consumer protection act claim.⁵

Statutory exemptions may apply on the basis of state licensing of lawyers⁶ although there is contrary authority.⁷ The exemption of an attorney has exempted the attorney's law firm⁸ but not as to services provided by nonlawyers within the firm.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC](#), 125 Conn. App. 678, 10 A.3d 61 (2010); [State ex rel. Doyle v. Frederick J. Hanna & Associates, P.C.](#), 287 Ga. 289, 695 S.E.2d 612 (2010); [Ackre v. Chapman & Chapman, P.C.](#), 2010 ND 167, 788 N.W.2d 344 (N.D. 2010).
- 2 [Born v. Hosto & Buchan, PLLC](#), 2010 Ark. 292, 372 S.W.3d 324 (2010); [Kosyodor v. American Express Centurion Services Corp.](#), 365 Ill. Dec. 757, 979 N.E.2d 123 (App. Ct. 5th Dist. 2012).
- 3 [Crowe v. Tull](#), 126 P.3d 196 (Colo. 2006).
Applying the state's unfair trade practices and consumer protection act to a law firm's representational activities on behalf of debt collection agency did not constitute an unconstitutional infringement on the exclusive jurisdiction of the court to regulate the practice of law. [Pepper v. Routh Crabtree, APC](#), 219 P.3d 1017 (Alaska 2009).
- 4 [Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC](#), 125 Conn. App. 678, 10 A.3d 61 (2010); [Kemp v. Jensen](#), 329 S.W.3d 866 (Tex. App. Eastland 2010).
- 5 [Crowe v. Tull](#), 126 P.3d 196 (Colo. 2006).
- 6 [Stewart v. Bierman](#), 859 F. Supp. 2d 754 (D. Md. 2012), *aff'd*, 528 Fed. Appx. 297 (4th Cir. 2013) (applying Maryland law).
- 7 [Pepper v. Routh Crabtree, APC](#), 219 P.3d 1017 (Alaska 2009).
A "state regulated industries" exception did not apply to a client's claim against a law firm. [RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P.](#), 399 S.C. 322, 732 S.E.2d 166 (2012), *cert. denied*, 133 S. Ct. 1255, 185 L. Ed. 2d 182 (2013).
- 8 [Hays v. Ruther](#), 313 P.3d 782 (Kan. 2013).
- 9 [State ex rel. Doyle v. Frederick J. Hanna & Associates, P.C.](#), 287 Ga. 289, 695 S.E.2d 612 (2010).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 289

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 289. Medical services or sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  222, 257

State consumer protection or deceptive trade practices statutes generally apply only to the business aspects of the practice of medicine,¹ excluding coverage of physicians engaged in the practice of medicine.² Professional negligence or malpractice claims against physicians are not within consumer protection or deceptive trade practices statutes.³ Statutory exemptions from consumer protection statutes may apply on the basis of state licensing of doctors.⁴

A state deceptive practice statute allows fraudulent representation claims against a dentist for wrongfully inducing consent to dental procedures⁵ and claims arising out of billing matters are not professional services claims against a dentist as would be exempt from the state's consumer protection act.⁶

The statutes also apply to the business or commercial activities of other health care providers, such as hospitals⁷ and pharmacies,⁸ or the manufacturers of medical devices.⁹

CUMULATIVE SUPPLEMENT

Cases:

Automobile insurer pled plausible claim against orthopedic clinics, surgical facilities, and billing company under Florida Deceptive and Unfair Trade Practices Act (FDUTPA) by alleging that they engaged in scheme to defraud it by creating and submitting inflated invoices in connection with covered claims, that it relied on those invoices in determining amount of settlements with patients, and that it would not have paid amounts listed on invoices had it known truth of arrangements among them. [Fla. Stat. Ann. § 501.204\(1\).State Farm Mutual Automobile Insurance Company v. Performance Orthopaedics & Neurosurgery, LLC, 278 F. Supp. 3d 1307, 98 Fed. R. Serv. 3d 1142 \(S.D. Fla. 2017\).](#)

Personal representative of estate of resident sufficiently alleged unfair or deceptive business practice concerning entrepreneurial or business aspect of senior care facility's provision of medical services, so as to state claim for unfair or deceptive business practices under Massachusetts law; representative provided sufficient facts to support practice of understaffing by operator of facility, as evidenced by resident's unsupervised fall and unsupervised choking incident, link between understaffing and resident's death, plausible inference that operator understaffed its facility in order to maximize profits, and misrepresentation on part of operator as to quality of care at its facility as related to staffing. [Mass. Gen. Laws Ann. ch. 93A, § 2. Libby v. Park, Marion and Vernon Streets Operating Company, LLC, 298 F. Supp. 3d 292 \(D. Mass. 2018\).](#)

Alleged conduct by members and owners of network of chiropractors was directly related to patient care and thus fell within scope of learned profession exemption from unfair and deceptive trade practices statute, where defendants allegedly engaged in unlawful price fixing with insurance providers which required chiropractors wanting to retain in-network status with insurance payors involved to limit their average cost of services per patient and, thus, the number of treatments provided to their patients. [N.C. Gen. Stat. Ann. § 75-1.1\(b\). Sykes v. Health Network Solutions, Inc., 828 S.E.2d 467 \(N.C. 2019\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Macfarlan v. Atlanta Gastroenterology Associates, Inc., 317 Ga. App. 887, 732 S.E.2d 292 \(2012\), cert. denied, \(Feb. 4, 2013\); Young v. Savidge, 155 Wash. App. 806, 230 P.3d 222 \(Div. 2 2010\).](#)
- 2 [State ex rel. Doyle v. Frederick J. Hanna & Associates, P.C., 287 Ga. 289, 695 S.E.2d 612 \(2010\); Lucas v. Awaad, 299 Mich. App. 345, 830 N.W.2d 141 \(2013\) appeal denied, 838 N.W.2d 146 \(Mich. 2013\); Brookins v. Mote, 2012 MT 283, 367 Mont. 193, 292 P.3d 347 \(2012\).](#)
- 3 [Pignona v. Farber, 128 So. 3d 390 \(La. Ct. App. 5th Cir. 2013\); Williams v. Lifestyle Lift Holdings, Inc., 175 Wash. App. 62, 302 P.3d 523 \(Div. 1 2013\).](#)
- 4 [Lucas v. Awaad, 299 Mich. App. 345, 830 N.W.2d 141 \(2013\) appeal denied, 838 N.W.2d 146 \(Mich. 2013\).](#)
- 5 [In re Small Smiles Litigation, 109 A.D.3d 1212, 971 N.Y.S.2d 784 \(4th Dep't 2013\).](#)
- 6 [Scull v. Groover, Christie & Merritt, P.C., 435 Md. 112, 76 A.3d 1186 \(2013\); St. John v. Wagner, 2013 WY 69, 302 P.3d 906 \(Wyo. 2013\).](#)
- 7 [Via Christi Regional Medical Center, Inc. v. Reed, 314 P.3d 852 \(Kan. 2013\); Brookins v. Mote, 2012 MT 283, 367 Mont. 193, 292 P.3d 347 \(2012\).](#)
- 8 [Patterson v. Rite Aid Corp Hdqtrs., 752 F. Supp. 2d 811 \(N.D. Ohio 2010\) \(applying Ohio law\); Graphic Communications Local 1B Health & Welfare Fund A v. CVS Caremark Corp., 833 N.W.2d 403 \(Minn. Ct. App. 2013\).](#)
The private cause of action afforded consumers under the state consumer protection statute does not extend to prescription drug purchases because the consumer cannot and does not decide what product to purchase. [White v. Wyeth, 227 W. Va. 131, 705 S.E.2d 828 \(2010\).](#)
- 9 [Dalton v. Animas Corp., 913 F. Supp. 2d 370 \(W.D. Ky. 2012\) \(applying Kentucky law\); Jones v. Ram Medical, Inc., 807 F. Supp. 2d 501, 75 U.C.C. Rep. Serv. 2d 707 \(D.S.C. 2011\) \(applying South Carolina law\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 290

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 290. Manufacturing services or sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  260

Forms

Forms relating to false or misleading representations of manufacturer, generally, see Am. Jur. Pleading and Practice Forms —Products Liability [\[Westlaw® Search Query\]](#)

State consumer protection or deceptive trade practices statutes generally enable actions against those engaged in manufacturing or producing goods, based on their misrepresentations or omissions, or other unlawful, unfair, or fraudulent practices with respect to the goods produced and delivered for retail sales to consumers.¹

The statutes generally encompass the acts or practices of manufacturers or producers in the health care industry, such as a drug or pharmaceutical manufacturer or medical devices manufacturer.²

CUMULATIVE SUPPLEMENT

Cases:

Smartphone purchasers failed to adequately plead that manufacturer had duty to disclose product defects, as essential element of common-law and state consumer protection statutory claims of deceit and fraudulent concealment; purchasers did not adequately plead that manufacturer had knowledge of product defects at time of purchase. [In re Nexus 6P Products Liability Litigation](#), 293 F. Supp. 3d 888, 95 U.C.C. Rep. Serv. 2d 213 (N.D. Cal. 2018).

Consumer's allegations for her Virginia Consumer Protection Act (VCPA) claim against dog food manufacturer for making misrepresentations about quality of its premium dog food product were pled with particularity in satisfaction of heightened pleading standards for fraud claims under federal rule applicable to VCPA claims, where consumer alleged that she purchased manufacturer's products because she believed that they were healthy, quality products for her pet and otherwise would not have done so if she was aware that manufacturer's representations were false and deceptive, and she identified specific statements on package label and explained how those statements constituted misrepresentations. [Va. Code Ann. § 59.1-200\(A\)](#). [Simpson v. Champion Petfoods USA, Inc.](#), 397 F. Supp. 3d 952, 99 U.C.C. Rep. Serv. 2d 306 (E.D. Ky. 2019).

Purchasers of device that allowed streaming of broadcast, satellite, and cable networks to a remote device, such as a computer, failed to allege that any acts or practices by seller of device concerning transmission of seller's own advertising content through device caused them any actual injury, and, thus, purchasers failed to state claim for violation of New York statute making deceptive acts and practices towards consumers unlawful on such basis, where purchasers failed to allege that they could no longer use their device to watch programming content, or that they now faced additional costs to view content, but only alleged that they did not have to view seller's unrequested advertisements until after certain date. [N.Y. General Business Law § 349](#). [In re Sling Media Slingbox Advertising Litigation](#), 202 F. Supp. 3d 352 (S.D. N.Y. 2016).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Herron v. Best Buy Co. Inc.](#), 924 F. Supp. 2d 1161 (E.D. Cal. 2013) (applying California law); [Hill v. Hoover Co.](#), 899 F. Supp. 2d 1259 (N.D. Fla. 2012) (applying Florida law); [Guidance Endodontics, LLC v. Dentsply Intern., Inc.](#), 728 F. Supp. 2d 1170 (D.N.M. 2010) (applying New Mexico law); [Hair Excitement, Inc. v. L'Oreal U.S.A., Inc.](#), 158 N.H. 363, 965 A.2d 1032 (2009).
- 2 [§ 289](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 291

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 291. Repair or replacement services or sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  [175](#), [176](#), [177](#), [195](#)

A.L.R. Library

[Automobile Repair Shop's Duty to Provide Customer with Information, Estimates, or Replaced Parts, Under Automobile Repair Consumer Protection Act, 78 A.L.R.6th 97](#)

Forms

Forms relating to wrongful retention of motor vehicle, see Am. Jur. Pleading and Practice Forms—Garages, Service Stations, and Parking Facilities [\[Westlaw® Search Query\]](#)

State consumer protection or deceptive trade practices statutes generally enable actions against those engaged in repairing or replacing goods for consumers, based on misrepresentations or omissions, or other unlawful, unfair, or fraudulent practices provided the requisites for liability are established under the circumstances,¹ but do not extend to a mere private action for

improper repairs.² A consumer fraud statute necessarily raises a heightened standard for a consumer claim against a repairer, beyond a typical consumer product repair scenario.³ A mere bad result in attempted repairs is not a violation of an unfair trade practices statute.⁴

Automobile service and repairs are a frequent basis for consumer protection act claims whether based on false or misleading representations made or alleged,⁵ nondisclosure of material information pertaining to the owner's acceptance of delivery⁶ or authorization for repairs,⁷ pricing, or charges for service.⁸ The failure to provide a service or repair price estimate required by statute is a deceptive trade practice.⁹

Refusing to take responsibility for repairs is an aggravating factor that can render commercial misconduct "unfair" as that term is used in a state unfair trade practices act¹⁰ or may constitute a breach of an agreement to make necessary repairs for purposes of a deceptive trade practices statute.¹¹ A manufacturer's statements that defective products are not repairable may be fraudulent for purposes of a state consumer protection statute if the manufacturer's representations are capable of misleading even reasonable consumers.¹²

Providing replacements under warranty is a "sale, lease, rental or loan" within the meaning of a state unfair practices act.¹³ False advertising of the suitability or compatibility of replacements is within the scope of a state consumer protection statute as directly affecting the interests of consumers.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Regulation adopted pursuant to statute covering deceptive trade practices, providing that it is an unfair or deceptive act or practice for a repair shop, prior to commencing repairs on a customer's vehicle, to fail to record in writing the specific repairs requested by the "customer," applied to transaction in which the customer was a business entity; regulation's language indicated that Attorney General had decided that the policies behind the motor vehicle rules necessitated that they be applied even beyond the consumer context. *M.G.L.A. c. 93A, § 2(a)*; 940 CMR 5.05(2) (1993). *Limoliner, Inc. v. Dattco, Inc.*, 475 Mass. 420, 2016 WL 4625702 (2016).

Towing companies were not bailees when they non-consensually towed motorists' vehicles pursuant to municipal contract, supporting finding that motorists could not assert claim under Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA) against companies based on such towing, even though companies had lawful possession of vehicles based on direction by police officers; companies' contract with municipality did not create any express or implied contract with motorists. *N.J. Stat. Ann. § 56:12-15. Pisack v. B & C Towing, Inc.*, 240 N.J. 360, 222 A.3d 693 (2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *Hill v. Hoover Co.*, 899 F. Supp. 2d 1259 (N.D. Fla. 2012) (applying Florida law).
- 2 *Dennis Simmons, D.D.S., P.A. v. Modern Aero, Inc.*, 603 N.W.2d 336 (Minn. Ct. App. 1999).
- 3 *Rait v. Sears, Roebuck and Co.*, 2009 WL 3667067 (D.N.J. 2009) (applying New Jersey law).
- 4 *Hubbard v. Albuquerque Truck Center Ltd.*, 125 N.M. 153, 1998-NMCA-058, 958 P.2d 111 (Ct. App. 1998).

- 5 [Davis v. Byers Volvo](#), 2012-Ohio-882, 2012 WL 691757 (Ohio Ct. App. 4th Dist. Pike County 2012).
Representations were mere puffing and not actionable. [Bossier Chrysler Dodge II, Inc. v. Rauschenberg](#),
201 S.W.3d 787 (Tex. App. Waco 2006), judgment aff'd in part, rev'd in part on other grounds, 238 S.W.3d
376 (Tex. 2007).
No representations were made absent an applicable service campaign or dealer recall. [Best Auto v. Autohaus](#),
LLC, 339 S.W.3d 372 (Tex. App. Dallas 2011).
- 6 [Holman v. Howard Wilson Chrysler Jeep, Inc.](#), 972 So. 2d 564 (Miss. 2008).
- 7 [Spencer v. Don McGill of Katy, Ltd.](#), 2011 WL 722505 (Tex. App. Houston 14th Dist. 2011).
- 8 [Hibbs v. Allstate Ins. Co.](#), 193 Cal. App. 4th 809, 123 Cal. Rptr. 3d 80, 78 A.L.R.6th 677 (2d Dist. 2011),
as modified on denial of reh'g, (Mar. 24, 2011); [Stamatakis v. Metropolitan Property & Cas. Ins. Co.](#), 2011
Mass. App. Div. 174, 2011 WL 2923879 (2011); [Kaskin v. John Lynch Chevrolet-Pontiac Sales, Inc.](#), 2009
WI App 65, 318 Wis. 2d 802, 767 N.W.2d 394 (Ct. App. 2009).
- 9 [State v. Ames](#), 182 Ohio App. 3d 736, 2009-Ohio-3509, 914 N.E.2d 1118 (2d Dist. Darke County 2009).
- 10 [Searles v. Fleetwood Homes Of Pennsylvania, Inc.](#), 2005 ME 94, 878 A.2d 509 (Me. 2005).
- 11 [Graves v. R.M. Packer Co., Inc.](#), 45 Mass. App. Ct. 760, 702 N.E.2d 21 (1998).
- 12 [People ex rel. Spitzer v. General Electric Co., Inc.](#), 302 A.D.2d 314, 756 N.Y.S.2d 520 (1st Dep't 2003).
- 13 [Porcell v. Lincoln Wood Products, Inc.](#), 2010 WL 1541264 (D.N.M. 2010) (applying New Mexico law).
- 14 [Princeton Graphics Operating, L.P. v. NEC Home Electronics \(U.S.A.\), Inc.](#), 732 F. Supp. 1258 (S.D. N.Y.
1990) (applying New York law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

17 Am. Jur. 2d Consumer Protection § 292

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 292. Insurance services, sales, and settlements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  221

A.L.R. Library

[Coverage of insurance transactions under state consumer protection statutes, 77 A.L.R.4th 991](#)

[Health provider's agreement as to patient's copayment liability after award by professional service insurer as unfair trade practice under state law, 49 A.L.R.4th 1240](#)

Bad faith insurance practices may qualify as actionable fraudulent business practices under a state consumer protection act,¹ or as a per se violation of the act,² in addition to other bases of potential liability for breach of an insurer's obligations to the insured, whether by statute or at common law, and an unfair practice claim may be based on a single instance of an unfair business practice.³

Generally, the existence of a state statute regulating insurance does not preclude the maintenance of an action under a state consumer protection statute for an alleged unfair practice in the insurance industry.⁴ In some jurisdictions, however, insurance statutes addressing unfair or deceptive insurance practices expressly preclude other avenues of relief,⁵ while in other jurisdictions, the state consumer protection statute expressly exempts insurance transactions from the act.⁶ In addition, even on

the application of a consumer statute, an insurer's misconduct may be considered limited to a failure to honor its contractual obligations, as opposed to constituting deceptive practices in violation of the consumer fraud and deceptive practices statute, as required by a rule that allegations of consumer fraud in a contractual setting must show acts distinct from the underlying breach of contract.⁷

If a claim under an unfair practices statute is made interdependently with a claim under an insurance statute that is the exclusive and comprehensive source of state insurance policy, the failure of the insurance statute claim is fatal to the unfair practices claim since it leaves no question of a violated public policy.⁸

The sale or purchase of insurance generally falls within the scope of a state consumer protection statute as the sale or purchase of a "service"⁹ or a sale of "merchandise" or "property."¹⁰

An insurance company's actions in settling a claim are not inherently "consumer-oriented" for purposes of a deceptive practices claim, requiring the plaintiff to establish facts showing injury or potential injury to the public,¹¹ but an insurer's violation of the rules of fairness for claims handling or settlement may be actionable as an unfair trade practice.¹² The statute may require additional proof that the alleged unfair claim settlement practice occurs with such frequency as to indicate a general business practice.¹³

An insurer's denial of benefits¹⁴ or coverage without reasonable justification constitutes an unfair act under a state consumer protection act.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Parent corporation that negotiated and resolved personal injury claim brought against its retail subsidiary did not function as a third-party administrator that could be held liable for unfair claim settlement practices under Massachusetts insurance law; corporation was not interposed between an insurer and the claimant, as corporation was self-insured for the first \$2,000,000 of potential liability facing any one of its subsidiaries, and corporation did not purport to act on behalf of an insurer that had a contractual obligation to pay claims, as corporation was under no duty to settle claims made against its subsidiaries. [M.G.L.A. c. 93A, § 9; c. 176D, § 3\(9\). *Bingham v. Supervalu, Inc.*, 806 F.3d 5 \(1st Cir. 2015\).](#)

Comprehensive general liability insurer's delay in paying insured property owner unreimbursed defense costs arising from a claim for subsurface oil pollution did not involve egregious settlement malfeasance and was not actionable under Massachusetts' unfair trade practices act; insurer immediately pursued mediation for defense costs after a court ruled that it had breached its duty to defend insured, and issue of unreimbursed defense costs was shuffled into broader panoramic of on-going, complex litigation that included potential legal responsibility of insured's other insurers. [M.G.L.A. c. 93A, § 2. *Peabody Essex Museum, Inc. v. U.S. Fire Ins. Co.*, 802 F.3d 39 \(1st Cir. 2015\).](#)

Insured Roman Catholic diocesan entity seeking reimbursement of settlements of claims of sexual abuse by priests under excess liability insurance policy failed to prove that insurer maintained a general business practice of failing to affirm or deny claims within a reasonable time after the insured's provision of a proof of loss, in violation of Connecticut Unfair Insurance Practices Act (CUIPA) through Connecticut Unfair Trade Practices Act's (CUTPA); diocese's showing of misconduct in nine to 11 percent of representative sample of claims from other dioceses under same insurance policy did not show a prevalent, usual, or widespread practice, industry handbook stating that misconduct rate of 7 percent is sufficient to show general business practice did not reflect policies or procedures that were required to be implemented by any jurisdiction, and fact that insurer kept claims open

while taking other steps to resolve them was not failure to affirm or deny the claims. [Conn. Gen. Stat. Ann. § 38a-816\(6\)\(E\)](#). [Hartford Roman Catholic Diocesan Corporation v. Interstate Fire & Casualty Company](#), 905 F.3d 84 (2d Cir. 2018).

Commercial general liability (CGL) insurer's initial denial of coverage for claims against insured subcontractor, arising from accident in which its employee sustained injuries when he fell into an open clarifier tank at water treatment facility while acting as spotter for truck driver, was not unreasonable, and thus insurer did not violate Massachusetts statute prohibiting unfair or deceptive acts or practices; primary issue before the district court in subcontractor's declaratory judgment action was whether subcontractor was entitled to coverage under the policy and there was little legal precedent on that precise issue, none of it binding and much of it conflicting. [M.G.L.A. c. 93A, § 1. A & W Maintenance, Inc. v. First Mercury Ins. Co.](#), 91 F. Supp. 3d 113 (D. Mass. 2015).

Even if houseguest, who allegedly tripped on insured homeowners' patio and broke her hip, was an intended third-party beneficiary under insureds' homeowners policy, she failed to comply with the procedural requirements of the New Mexico Trade Practices and Frauds Act (TPFA), and thus was precluded from pursuing claim against insurer, based on insurance adjuster contacting her while she was still in the hospital, allegedly in violation of the New Mexico Release Act, where houseguest did not obtain a judgment against the insureds but instead reached a settlement with insurer. West's [NMSA §§ 41-1-1, 59A-16-20\(E\), 59A-16-30](#). [Williams v. Foremost Ins. Co.](#), 102 F. Supp. 3d 1230 (D.N.M. 2015).

Uninsured/underinsured motorist (UIM) insurer violated Washington Consumer Protection Act in connection with \$50,000 policy limits settlement offer from at-fault motorist's insurer, where UIM insurer violated its duty of good faith by attempting to force insured motorists to litigate against parties who had no assets or insurance other than the settlement offer, such acts occurred in trade or commerce, and, by being unable to deposit the \$50,000 settlement check earlier because of UIM insurer's conduct, motorists were damaged by loss of interest they would have earned on the money. [Wash. Rev. Code Ann. § 19.86.010 et seq.](#) [Kramer v. Safeco Insurance Company of Oregon](#), 428 F. Supp. 3d 456 (W.D. Wash. 2019).

To state a claim under West Virginia's Unfair Trade Practices Act (UTPA) against an insurer, a plaintiff must show that the insurer repeatedly violated UTPA provision prohibiting unfair claim settlement practices; violations may occur in the handling of multiple claims or a single claim. [West's Ann.W.Va.Code, 33-11-4\(9\)](#). [Soyoola v. Oceanus Ins. Co.](#), 986 F. Supp. 2d 695 (S.D. W. Va. 2013).

Insurer's plausible, reasoned legal position that may ultimately turn out to be mistaken, or simply unsuccessful, is outside the scope of punitive aspects of the combined application of consumer protection statute and unfair or deceptive acts or practices in the business of insurance. [Mass. Gen. Laws Ann. ch. 93A, § 2](#); [Mass. Gen. Laws Ann. ch. 176D, § 3](#). [Aquino v. United Property & Casualty Company](#), 483 Mass. 820, 143 N.E.3d 379 (2020).

Absence of a judgment in insured's favor establishing amount of contract damages incurred for liability insurer's breach of duty to defend did not preclude insured's consumer protection claim for unfair or deceptive acts or practices. [M.G.L.A. c. 93A, § 11](#). [Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.](#), 469 Mass. 813, 17 N.E.3d 1066 (2014).

Insured sufficiently alleged deception, as required by deceptive business practices statute, with regard to insurer's increase in life insurance policy premiums, where insured alleged that the life insurance policy at issue did not define the term a given class, the group for which insurer was contractually permitted to raise insurance rates, that the policy did not address whether, when, or how an insured person could be reclassified, and that insurer targeted elderly individuals and raised their premiums to a degree that they were forced to surrender their insurance. [N.Y. General Business Law § 349](#). [Hobish v. AXA Equitable Life Insurance Company](#), 171 A.D.3d 494, 98 N.Y.S.3d 38 (1st Dep't 2019).

Allegations in licensed physician's complaint against medical malpractice insurer demonstrated that action was merely a private contract dispute over medical malpractice insurance policy coverage which did not affect the consuming public at large, and therefore physician lacked cause of action for unlawful and deceptive practices and acts; physician alleged that insurer's

employees fraudulently misrepresented the effect of her refusal to consent to settle malpractice claim, thereby inducing her to consent to settle, and sought declarations voiding her consent to settle and vacating the medical malpractice settlement. [N.Y. General Business Law § 349. Ullman v. Medical Liability Mutual Insurance Company, 159 A.D.3d 1498, 73 N.Y.S.3d 845 \(4th Dep't 2018\).](#)

While Consumer Protection Act (CPA) authorized cause of action against insurer for alleged violation of statutory duty of good faith, arising out of negotiation of settlement of insured's claim for uninsured motorist (UM) benefits, violation of statutory duty of good faith was not actionable under CPA against insurer's claims adjuster. [Wash. Rev. Code Ann. §§ 19.86.010 et seq., 48.01.030. Keodalah v. Allstate Insurance Company, 449 P.3d 1040 \(Wash. 2019\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Yanting Zhang v. Superior Court, 57 Cal. 4th 364, 159 Cal. Rptr. 3d 672, 304 P.3d 163 \(2013\).](#)
The bad faith and consumer protection actions may lie even absent coverage under an insurance policy. [Tudor Ins. Co. v. Hellickson Real Estate, 810 F. Supp. 2d 1211 \(W.D. Wash. 2011\), aff'd, 493 Fed. Appx. 895 \(9th Cir. 2012\) \(applying Washington law\).](#)
- 2 [Wellman & Zuck, Inc. v. Hartford Fire Ins. Co., 170 Wash. App. 666, 285 P.3d 892 \(Div. 1 2012\), review denied, 176 Wash. 2d 1019, 297 P.3d 707 \(2013\).](#)
Any relevant violation of the insurance regulatory statute constitutes a violation of the consumer protection statute. [Cobb v. Pennsylvania Life Ins. Co., 215 N.C. App. 268, 715 S.E.2d 541 \(2011\).](#)
- 3 [Yanting Zhang v. Superior Court, 57 Cal. 4th 364, 159 Cal. Rptr. 3d 672, 304 P.3d 163 \(2013\).](#)
- 4 [Yanting Zhang v. Superior Court, 57 Cal. 4th 364, 159 Cal. Rptr. 3d 672, 304 P.3d 163 \(2013\); State v. Acordia, Inc., 310 Conn. 1, 73 A.3d 711 \(2013\); Cobb v. Pennsylvania Life Ins. Co., 215 N.C. App. 268, 715 S.E.2d 541 \(2011\).](#)
- 5 [Montesi v. Nationwide Mut. Ins. Co., 2013 WL 4522905 \(W.D. Tenn. 2013\) \(applying Tennessee law\).](#)
- 6 [Childs v. Unified Life Ins. Co., 781 F. Supp. 2d 1240 \(N.D. Okla. 2011\) \(applying Oklahoma law\); Lewis v. Omni Indem. Co., 2013 WL 4823401 \(D.S.C. 2013\) \(applying South Carolina law\).](#)
- 7 [Philadelphia Indem. Ins. Co. v. Chicago Title Ins. Co., 871 F. Supp. 2d 744 \(N.D. Ill. 2012\) \(applying Illinois law\).](#)
Insured's losses must be independent of the breach of contract claim. [Fleisher v. Phoenix Life Ins. Co., 858 F. Supp. 2d 290 \(S.D. N.Y. 2012\) \(applying New York law\).](#)
- 8 [State v. Acordia, Inc., 310 Conn. 1, 73 A.3d 711 \(2013\).](#)
The dismissal of insurance code claims resulted in the failure of the dependent deceptive trade practices claim. [Effinger v. Cambridge Integrated Services Group, 478 Fed. Appx. 804 \(5th Cir. 2011\) \(applying Texas law\).](#)
- 9 [Showpiece Homes Corp. v. Assurance Co. of America, 38 P.3d 47 \(Colo. 2001\), as modified on denial of reh'g, \(Jan. 11, 2002\).](#)
- 10 [Force v. ITT Hartford Life & Annuity Ins. Co., 4 F. Supp. 2d 843 \(D. Minn. 1998\) \(applying Minnesota law\); Showpiece Homes Corp. v. Assurance Co. of America, 38 P.3d 47 \(Colo. 2001\), as modified on denial of reh'g, \(Jan. 11, 2002\).](#)
- 11 [Wilson v. Northwestern Mut. Ins. Co., 625 F.3d 54 \(2d Cir. 2010\) \(applying New York law\).](#)
- 12 [Tucker v. American Intern. Group, Inc., 936 F. Supp. 2d 1 \(D. Conn. 2013\) \(applying Connecticut law\); Guessford v. Pennsylvania Nat. Mut. Cas. Ins. Co., 918 F. Supp. 2d 453 \(M.D. N.C. 2013\) \(applying North Carolina law\); Ural v. Encompass Ins. Co. of America, 97 A.D.3d 562, 948 N.Y.S.2d 621 \(2d Dep't 2012\).](#)
The statute's reference to insurance settlement practices does not preclude a right of action for nonsettlement unfair or deceptive practices of an insurer. [Passatempo v. McMenimen, 461 Mass. 279, 960 N.E.2d 275 \(2012\).](#)

- 13 Traylor v. Awwa, 899 F. Supp. 2d 216 (D. Conn. 2012) (applying Connecticut law).
- 14 In re WellPoint, Inc. Out-of-Network UCR Rates Litigation, 865 F. Supp. 2d 1002 (C.D. Cal. 2011) (applying New York law).
- 15 Courchaine v. Commonwealth Land Title Ins. Co., 174 Wash. App. 27, 296 P.3d 913 (Div. 3 2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 293

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 293. Real estate sales or development

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  198, 199

Some state consumer protection statutes are not applicable to transactions involving a sale of real estate¹ and particularly not to situations in which private homeowners sell their own homes.²

Caution:

Developers, contractors, and real estate agents cannot insulate themselves from liability under a consumer protection act simply by owning and briefly residing in a house before they offer it for sale as their personal residence.³

Some statutes encompass acts or practices in the sale of real estate for commercial or development purposes⁴ and in private sales transactions.⁵ Land improvement contracts have also fallen within a state consumer sales practices act⁶ so long as the contracts are consumer transactions.⁷

Persons engaged in the buying and selling of real estate are within the scope of a consumer-protection or deceptive-trade-practices statute,⁸ including real estate appraisers,⁹ real estate developers,¹⁰ and real estate agents or brokers.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Foreign property developer and corporate affiliates that comprised common enterprise were jointly and severally liable for monetary relief, under FTC Act, for their material misrepresentations that were likely to mislead American-based consumers in large-scale land sales scam for real estate development in Belize, since misrepresentations were express, so consumer reliance on them was presumptively reasonable, and they were widely disseminated. Federal Trade Commission Act §§ 5, 13, 15 U.S.C.A. §§ 45(a), 53(b). *In re Sanctuary Belize Litigation*, 482 F. Supp. 3d 373 (D. Md. 2020), subsequent determination, 2021-1 Trade Cas. (CCH) ¶ 81516, 2021 WL 124190 (D. Md. 2021) and subsequent determination, 2021-1 Trade Cas. (CCH) ¶ 81515, 2021 WL 119209 (D. Md. 2021).

Vendor's representation that ski-out access would be constructed for home was not untrue at time it was made, and therefore was not unfair or deceptive under the Montana Consumer Protection Act (MCPA); although access was never constructed, events that prevented construction of ski-out access were unknown and unknowable to vendor at the time of its representation to purchaser and were completely outside of vendor's control. MCA § 30-14-103. *WLW Realty Partners, LLC v. Continental Partners VIII, LLC*, 2015 MT 312, 381 Mont. 333, 360 P.3d 1112 (2015).

Sale of renovated townhouse was not consumer-oriented, and, thus, buyer could not bring action against sellers under General Business Law (GBL) for deceptive acts and practices, where sale was single, private transaction. *N.Y. General Business Law § 349. 116 Waverly Place LLC v. Spruce 116 Waverly LLC*, 179 A.D.3d 511, 119 N.Y.S.3d 78 (1st Dep't 2020).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *Pointe At Gateway Condominium Owner's Assn., Inc. v. Schmelzer*, 2013-Ohio-3615, 2013 WL 4510576 (Ohio Ct. App. 8th Dist. Cuyahoga County 2013).
- 2 *Hughes v. DiSalvo*, 143 N.H. 576, 729 A.2d 422 (1999); *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997).
- 3 *Fayne v. Vincent*, 301 S.W.3d 162 (Tenn. 2009).
- 4 *Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC*, 125 Conn. App. 678, 10 A.3d 61 (2010); *Williams v. United Community Bank*, 724 S.E.2d 543 (N.C. Ct. App. 2012); *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 730 S.E.2d 340 (Ct. App. 2012).
- 5 *Harley v. Indian Spring Land Co.*, 123 Conn. App. 800, 3 A.3d 992 (2010); *Milliken v. Jacono*, 2012 PA Super 284, 60 A.3d 133 (2012).
- 6 *George v. Al Hoyt & Sons, Inc.*, 162 N.H. 123, 27 A.3d 697 (2011).
- 7 *J & D Rack Co., Inc. v. Kreimer*, 194 Ohio App. 3d 479, 2011-Ohio-2358, 957 N.E.2d 39 (1st Dist. Hamilton County 2011).
- 8 *Snierston v. Scruton*, 145 N.H. 73, 761 A.2d 1046 (2000), as modified, (Nov. 22, 2000).
- 9 *Gaudie v. Potestivo Appraisal Services, Inc.*, 837 F. Supp. 2d 799 (N.D. Ill. 2011) (applying Illinois law).
- 10 *George v. Al Hoyt & Sons, Inc.*, 162 N.H. 123, 27 A.3d 697 (2011).

11

[In re Rhee](#), 481 B.R. 880 (Bankr. S.D. Tex. 2012) (applying Texas law); [Landmark Investment Group, LLC v. Chung Family Realty Partnership, LLC](#), 125 Conn. App. 678, 10 A.3d 61 (2010); [Lang McLaughry Spera Real Estate, LLC v. Hinsdale](#), 190 Vt. 1, 2011 VT 29, 35 A.3d 100 (2011).

The "state regulated industries" exception did not apply to one real estate agent's claim against another real estate agent. [Hennes v. Shaw](#), 397 S.C. 391, 725 S.E.2d 501 (Ct. App. 2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 294

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 294. Real estate leases and rentals

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  200, 201

Consumer-protection statutes may encompass landlords as sellers,¹ and the leasing or rental of commercial real estate² and residential housing.³ In other jurisdictions, consumer protection statutes are inapplicable to residential leases⁴ and do not apply to landlord-tenant rent disputes.⁵

A lease of land for the specifically limited purpose of raising sod, hay, and tobacco constitutes a business-related or commercial purpose, and thus is not a "consumer debt."⁶

CUMULATIVE SUPPLEMENT

Cases:

Memorandum issued by Massachusetts Department of Health did not serve to revoke variance provided by city board of health to landlord that permitted gas submetering system in landlord's apartment building, and thus variance precluded putative class action claim by tenants against landlord and utility building contractor, asserting that any gas utility charges constituted unfair or deceptive practices within meaning of Massachusetts statute, since tenants would have been entitled to receive gas service without charge had submetering system been unlawful pursuant to Massachusetts regulations; while revocation of variance was possible, memorandum did not comply with regulations governing such revocation, since it did not notify tenants of possible

revocation, nor did it offer them an opportunity to be heard. [Mass. Gen. Laws Ann. ch. 93A, § 2](#); [105 Mass. Code Regs. 410.020, 410.354\(A\), 410.840\(B\)](#). [Conley v. Roseland Residential Trust, 442 F. Supp. 3d 443 \(D. Mass. 2020\)](#).

Apartment lease imposed the same 60-day notice requirement on both landlord and tenant, and thus tenant failed to state a claim against landlord for unfair practices under the Consumer Fraud and Deceptive Business Practices Act for allegedly having one notice period for landlord and a different notice period for tenant, even though one lease clause stated that landlord would notify tenant of landlord's intention not to renew the lease at least 30 days before it expired, where the lease was a form lease that stated that it would automatically renew month-to-month unless either party gave 60 days' written notice, the number "60" was handwritten on the lease in the space provided, and the lease further stated that 30 days' notice was required if the number of days was not filled in. [815 Ill. Comp. Stat. Ann. 505/2](#). [Kopnick v. JL Woode Management Company, LLC, 2017 IL App \(1st\) 152054, 412 Ill. Dec. 665, 76 N.E.3d 105 \(App. Ct. 1st Dist. 2017\)](#).

Landlords' representation to tenants that landlords had no obligation to warrant house's habitability was insufficient to subject landlords to liability under the Deceptive Consumer Sales Act, even if landlords knew or should have known that representation was false, in the absence of any showing by tenants that they relied upon the representation, and where the Act expressly did not apply to a consumer transaction in real property. [Ind. Code Ann. § 24-5-0.5-3\(a\)\(8\)](#). [Rainbow Realty Group, Inc. v. Carter, 131 N.E.3d 168 \(Ind. 2019\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Heyert v. Taddese, 431 N.J. Super. 388, 70 A.3d 680 \(App. Div. 2013\)](#).
- 2 [New Bar Partnership v. Martin, 729 S.E.2d 675 \(N.C. Ct. App. 2012\)](#); [Drury Southwest, Inc. v. Louie Ledeaux #1, Inc., 350 S.W.3d 287 \(Tex. App. San Antonio 2011\)](#), review denied, (Mar. 30, 2012).
The landlord's breach of a commercial lease agreement did not implicate the public interest. [Dollar Tree Stores Inc. v. Toyama Partners LLC, 875 F. Supp. 2d 1058 \(N.D. Cal. 2012\)](#) (applying California law).
- 3 [Dean v. Hill, 171 N.C. App. 479, 615 S.E.2d 699 \(2005\)](#); [L'Esperance v. Benware, 175 Vt. 292, 2003 VT 43, 830 A.2d 675 \(2003\)](#).
- 4 [Roberson v. Southwood Manor Associates, LLC, 249 P.3d 1059 \(Alaska 2011\)](#).
- 5 [Billings v. Wilson, 397 Mass. 614, 493 N.E.2d 187 \(1986\)](#).
- 6 [Winkler v. Germann, 329 S.W.3d 349 \(Ky. Ct. App. 2010\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 295

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability

4. Applicability to Particular Transactions or Acts

§ 295. Credit or loan products and services

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  209

West's Key Number Digest, Consumer Credit  1, 2

A state consumer protection statute covers a lender¹ and a sale of credit² or extension of credit,³ including the process of an application for credit.⁴ Nonetheless, the applicability of the statute does not in itself establish the liability or wrongful conduct of the lender or creditor, which must be established under the statutory criteria.⁵

A claim against a lender bank for unfair and deceptive practices must be one that exists separately from a claim of breach of contract against the lender bank in order to stand under the statute.⁶

A state statute dealing with unfair or deceptive practices with regard to the purchase of goods does not apply to the conduct of a mortgage holder and loan servicer after the initial sales transaction to which they are not parties.⁷

CUMULATIVE SUPPLEMENT

Cases:

Loan servicer's letter stating that mortgagor was ineligible for Home Affordable Modification Plan (HAMP) loan modification because she did not submit trial payment plan (TPP) payments on time and alleged statements by loan servicer's representative that denial letter was sent in error, that mortgagor should send in a payment, and that she would receive modification

were not unfair or deceptive acts, as would violate Massachusetts statute prohibiting unfair or deceptive acts and practices; representative's statements amounted to negligence, loan servicer's mistake did not cause mortgagor to act any differently than she otherwise would have, given that mortgagor sent in the amount that she claims would have been her monthly rate under a HAMP modification, and mortgagor failed to show that she did not breach the TPP agreement by sending in late payment. [M.G.L.A. c. 93A, § 1 et seq. Young v. Wells Fargo Bank, N.A., 109 F. Supp. 3d 387 \(D. Mass. 2015\).](#)

Borrowers alleged payment of "unwarranted fees and penalties" did not support borrowers' claim against loan servicer for restitution under the Unfair Competition Law (UCL), absent any allegation that the servicer obtained the money borrower paid in the form of penalties and fees. [Cal. Bus. & Prof. Code § 17200. Daniels v. Select Portfolio Servicing, Inc., 246 Cal. App. 4th 1150, 201 Cal. Rptr. 3d 390 \(6th Dist. 2016\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Ihebereme v. Capital One, N.A., 730 F. Supp. 2d 40 \(D.D.C. 2010\) \(applying District of Columbia law\).](#)
- 2 [Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 25 A.3d 1103 \(2011\).](#)
Proof of the alleged misrepresentation of a loan product by a lender is required. [Bumpers v. Community Bank of Northern Virginia, 747 S.E.2d 220 \(N.C. 2013\).](#)
- 3 [Morgan v. Wilkins, 74 So. 3d 179 \(Fla. 1st DCA 2011\); LeJeune v. Paramount Nissan, LLC, 102 So. 3d 203 \(La. Ct. App. 3d Cir. 2012\); Martinez v. Best Buy Co., Inc., 2012 UT App 186, 283 P.3d 521 \(Utah Ct. App. 2012\), cert. denied, 293 P.3d 376 \(Utah 2012\).](#)
- 4 [LeJeune v. Paramount Nissan, LLC, 102 So. 3d 203 \(La. Ct. App. 3d Cir. 2012\).](#)
- 5 [Patterson v. Somerset Investors Corp., 96 A.D.3d 817, 946 N.Y.S.2d 217 \(2d Dep't 2012\) \(not established\); In re Fifth Third Bank, Nat. Ass'n-Village of Penland Litigation, 719 S.E.2d 171 \(N.C. Ct. App. 2011\), cert. denied, 366 N.C. 231, 731 S.E.2d 687 \(2012\) \(not established\); Godfrey v. Security Service Federal Credit Union, 356 S.W.3d 720 \(Tex. App. El Paso 2011\) \(not established\).](#)
- 6 [Suntrust Bank v. Bryant/Sutphin Properties, LLC, 732 S.E.2d 594 \(N.C. Ct. App. 2012\) review denied, 366 N.C. 417, 735 S.E.2d 180 \(2012\).](#)
- 7 [Conway v. CitiMortgage, Inc., 2013 WL 6235864 \(Mo. Ct. App. E.D. 2013\), reh'g and/or transfer denied, \(Jan. 27, 2014\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 296

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

A. Nature, Scope, Purpose, Elements, and Applicability


4. Applicability to Particular Transactions or Acts

§ 296. Debt collection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  211 to 218

West's Key Number Digest, Consumer Credit  1, 2

Debt-collection practices are within the scope of a state consumer protection statute,¹ and consumer protection statutes may be specifically tailored to address abuses in the area of debtor-creditor relations,² including state versions of the Federal Fair Debt Collection Practices Act.³

Observation:

Since attorneys engaged in the practice of law are not generally within the scope of consumer protection or unfair trade practice statutes,⁴ an attorney's collection efforts in the course of normal law practice are not subject to a deceptive trade practices act⁵ although there is contrary authority applying a state unfair trade practices and consumer protection act to a law firm's representation of a debt collection agency.⁶

CUMULATIVE SUPPLEMENT

Cases:

Former mortgagor, whose mortgage had been foreclosed upon, plausibly alleged that he was injured by debt collector's alleged violations of the Kansas Consumer Protection Act (KCPA), resulting from attempts to collect deficiency balance, and that collector's actions were deceptive and unconscionable, as necessary to state claim against collector for violation of the KCPA; mortgagor alleged that collector forged Form 1099-C to deceive mortgagor into paying amounts that had been discharged, that collector continued collection efforts without acquiring sufficient documentation to know if mortgagor still owed debt, and that collector's actions aggrieved him by causing him to incur financial loss, expenditure of significant time and out-of-pocket costs, frustration, fear, and embarrassment. [Kan. Stat. Ann. §§ 50-626, 50-627](#). [Robbins v. Dyck O'Neal, Inc., 447 F. Supp. 3d 1100 \(D. Kan. 2020\)](#).

Consumer sufficiently alleged that debt collector engaged in a consumer-oriented act, as required to state a claim under New York's deceptive business practices statute; facts alleged in the complaint were sufficient to create inference that defendant bought consumer debts and judgments in bulk, one of which was a judgment against consumer for his credit card debt, and that even though defendant did not have right to collect that, it attempted to get consumer to pay that debt through wage garnishment, and if such alleged conduct was typical of its business practices, defendant's actions could have broader impact on the public at large. [N.Y. General Business Law § 349](#). [McCrobie v. Palisades Acquisition XVI, LLC, 359 F. Supp. 3d 239 \(W.D. N.Y. 2019\)](#).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Pepper v. Routh Crabtree, APC, 219 P.3d 1017 \(Alaska 2009\)](#); [Demitro v. General Motors Acceptance Corp., 388 Ill. App. 3d 15, 327 Ill. Dec. 777, 902 N.E.2d 1163 \(1st Dist. 2009\)](#); [Barr v. NCB Management Services, Inc., 227 W. Va. 507, 711 S.E.2d 577 \(2011\)](#).
- 2 [Laughlin v. Household Bank, Ltd., 969 So. 2d 509 \(Fla. 1st DCA 2007\)](#).
- 3 [Udis v. Universal Communications Co., 56 P.3d 1177 \(Colo. App. 2002\)](#); [Davis Lake Community Ass'n, Inc. v. Feldmann, 138 N.C. App. 292, 530 S.E.2d 865 \(2000\)](#).
As to the effect of the federal act on state legislation, see § 265.
- 4 § 288.
- 5 [Bennett & DeLoney, P.C. v. State ex rel. McDaniel, 2012 Ark. 119, 388 S.W.3d 12 \(2012\)](#); [State ex rel. Swanson v. Messerli and Kramer, P.A., 2009 WL 1046869 \(Minn. Ct. App. 2009\)](#).
- 6 [Pepper v. Routh Crabtree, APC, 219 P.3d 1017 \(Alaska 2009\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection Two XI B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

B. Enforcement and Remedies

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#) 🔑 289, 290, 388 to 393

A.L.R. Library

A.L.R. Index, Consumer Protection

West's A.L.R. Digest, [Antitrust and Trade Regulation](#) 🔑 289, 290, 388 to 393

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 297

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

B. Enforcement and Remedies

1. Public Enforcement

§ 297. Attorney General action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  289, 388 to 393

A.L.R. Library

[Validity of express statutory grant of power to state to seek, or to court to grant, restitution of fruits of consumer fraud, 59 A.L.R.3d 1222](#)

Forms

Am. Jur. Pleading and Practice Forms, Monopolies, Restraints of Trade, and Unfair Trade Practices § 81 (Complaint, petition, or declaration—For unfair trade practices—Violation of state statute)

A state consumer protection statute or unfair trade practices act may vest the state attorney general with authority to take action under the statute,¹ exercising independent enforcement authority,² to seek restitution,³ damages,⁴ injunctive relief,⁵ civil

penalties,⁶ or other relief,⁷ on behalf of injured consumers and the citizens of the state.⁸ There may be no requirement to show actual damages.⁹

The attorney general may approve an enforcement action by a city or town.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Attorney General is not required to name in a complaint the consumers on whose behalf it is litigating an action for violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). [West's F.S.A. § 501.207\(1\)](#). [State v. Beach Blvd Automotive Inc.](#), 139 So. 3d 380 (Fla. 1st DCA 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [CEI Engineering Associates, Inc. v. Elder Const. Co.](#), 2009 Ark. App. 259, 306 S.W.3d 447 (2009); [Curtis v. Altria Group, Inc.](#), 813 N.W.2d 891 (Minn. 2012).
- 2 [Gonzalez v. Wilshire Credit Corp.](#), 207 N.J. 557, 25 A.3d 1103 (2011).
- 3 [Kwikset Corp. v. Superior Court](#), 51 Cal. 4th 310, 120 Cal. Rptr. 3d 741, 246 P.3d 877 (2011); [State ex rel. Miller v. New Womyn, Inc.](#), 679 N.W.2d 593 (Iowa 2004).
- 4 [Thomas v. State](#), 226 S.W.3d 697 (Tex. App. Corpus Christi 2007).
- 5 [People ex rel. Madigan v. United Const. of America, Inc.](#), 2012 IL App (1st) 120308, 367 Ill. Dec. 79, 981 N.E.2d 404 (App. Ct. 1st Dist. 2012), [appeal denied](#), 368 Ill. Dec. 734, 985 N.E.2d 307 (Ill. 2013); [Hurricane Fence Co., Inc. v. Jensen Metal Products, Inc.](#), 119 So. 3d 683 (La. Ct. App. 5th Cir. 2013); [People ex rel. Spitzer v. Applied Card Systems, Inc.](#), 27 A.D.3d 104, 805 N.Y.S.2d 175 (3d Dep't 2005).
- 6 [Cavallini v. Pet City and Supply](#), 2004 PA Super 141, 848 A.2d 1002 (2004).
- 7 [People ex rel. Madigan v. United Const. of America, Inc.](#), 2012 IL App (1st) 120308, 367 Ill. Dec. 79, 981 N.E.2d 404 (App. Ct. 1st Dist. 2012), [appeal denied](#), 368 Ill. Dec. 734, 985 N.E.2d 307 (Ill. 2013).
[Disgorgement to the State is not permitted, only restitution to consumers.](#) [State ex rel. Horne v. AutoZone, Inc.](#), 229 Ariz. 358, 275 P.3d 1278 (2012).
- 8 [Curtis v. Altria Group, Inc.](#), 813 N.W.2d 891 (Minn. 2012).
The attorney general's action qualifies as a de facto class action. [Thomas v. State](#), 226 S.W.3d 697 (Tex. App. Corpus Christi 2007).
- 9 [Marcus v. BMW of North America, LLC](#), 687 F.3d 583, 83 Fed. R. Serv. 3d 246 (3d Cir. 2012) (applying New Jersey law); [People ex rel. Madigan v. United Const. of America, Inc.](#), 2012 IL App (1st) 120308, 367 Ill. Dec. 79, 981 N.E.2d 404 (App. Ct. 1st Dist. 2012), [appeal denied](#), 368 Ill. Dec. 734, 985 N.E.2d 307 (Ill. 2013).
- 10 [City of Charleston, SC v. Hotels.com, LP](#), 487 F. Supp. 2d 676 (D.S.C. 2007) (applying South Carolina law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 298

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

B. Enforcement and Remedies

1. Public Enforcement

§ 298. Investigation; investigative demands

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  289

Some state consumer protection statutes empower the state attorney general to investigate violations for enforcement of the statute,¹ including investigative demands to prevent deceptive or unfair trade practices and protect consumers.²

The attorney general's failure to pursue a civil investigative demand did not deprive the court of any power to proceed.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [West Virginia ex rel. McGraw v. CVS Pharmacy, Inc.](#), 646 F.3d 169 (4th Cir. 2011) (applying West Virginia law).
- ² [Minnesota Twins Partnership v. State ex rel. Hatch](#), 592 N.W.2d 847 (Minn. 1999); [Paramount Builders, Inc. v. Com.](#), 260 Va. 22, 530 S.E.2d 142 (2000).
- ³ [State ex rel. Danforth v. Independence Dodge, Inc.](#), 494 S.W.2d 362 (Mo. Ct. App. 1973).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 299

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

B. Enforcement and Remedies

2. Private Enforcement

§ 299. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  290

A.L.R. Library

[Right to Private Action Under State Consumer Protection Act—Preconditions to Action, 117 A.L.R.5th 155](#)

[Right to Private Action Under State Consumer Protection Act—Equitable Relief Available, 115 A.L.R.5th 709](#)

State consumer protection statutes generally provide for private remedies¹ except statutes that apply only in limited contexts.²

A private plaintiff, where authorized, must show actual damages,³ actual injury,⁴ or lost money or property.⁵ The term "ascertainable loss" is often used in reference to the private litigant's burden and means a loss that is quantifiable or measurable, not hypothetical or illusory.⁶

Caution:

A state's statutory authorization of a private attorney general proceeding does not alone overcome the constitutional and jurisdictional requirement of standing.⁷

Practice Tip:

If the action is one characterized by statute as a private attorney general action, the plaintiff must show that the violations harmed the public interest and not solely the plaintiff.⁸ The requirement to show harm to the public interest is an element of the plaintiff's cause of action and does not implicate the question of standing.⁹

A final judgment or decree in any consumer protection statute action brought by the attorney general¹⁰ is prima facie evidence against the defendant in any private action unless the judgment is a consent judgment or decree.¹¹

That the consumer may have a remedy under the common law¹² or another state statute does not affect the consumer's right to assert a claim under the consumer protection statute.¹³

The right of the state attorney general to enforce the consumer protection laws¹⁴ is superior to the right of a private litigant to bring the same lawsuit, and the scope of a private litigant's rights as a private attorney general is no broader than the authority of the attorney general.¹⁵ While the attorney general has the authority to settle and release a private litigant's consumer protection claims brought under the private attorney general statute, the private litigant cannot settle or release the State's claims without the express consent of the State.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Consumer, who purchased tickets for sporting event, the "Superbowl," on secondary market at prices in excess of the printed ticket value, lacked Article III standing to bring putative class action against National Football League (NFL) under New Jersey Consumer Fraud Act; alleged misconduct of NFL in failing to make more than five percent of tickets available to general public did not cause consumer to pay higher price, since consumer failed to enter general public ticket lottery, and there was no indication that distribution of 99 percent of the tickets to NFL and corporate insiders rather than the general public had the effect of increasing or decreasing prices on the secondary market, since those insiders could have also sold their tickets on that market. [U.S.C.A. Const. Art. 3, § 1 et seq.](#); [N.J.S.A. 56:8–35.1](#). [Finkelman v. National Football League](#), 810 F.3d 187 (3d Cir. 2016).

Mortgagors had not suffered injury in fact required for standing under [Article III of the United States Constitution](#) to bring Ohio Consumer Sales Practices Act claims against attorney representing mortgage servicing company and attorney's firm; although letters attorney sent on behalf of servicing company did not disclose that they were from a debt collector, and even if Ohio Consumer Sales Practices Act entitled mortgagors to sue for such failure, letters were ones merely sending mortgagors

a warranty deed in lieu of foreclosure for their execution and then confirming that execution while reaffirming that servicing company would not attempt to collect any deficiency balance. [U.S. Const. art. 3](#); [Ohio Rev. Code Ann. § 1345.02](#). [Hagy v. Demers & Adams](#), 882 F.3d 616 (6th Cir. 2018).

Consumers who claimed that prescription eye drops purchased for the treatment of their glaucoma were unnecessarily large, and that they would have paid a lower price if the drops were smaller in size but contained same active pharmaceutical ingredient, failed to allege an actionable injury to support standing to bring class action against manufacturers for violation of Illinois Consumer Fraud Act or Missouri Merchandising Practices Act; class alleged only a mere regret or disappointment in the product, rather than an invasion of a legally protected interest. [Mo. Ann. Stat. § 407.010 et seq.](#); [815 Ill. Comp. Stat. Ann. 505/1 et seq.](#) [Eike v. Allergan, Inc.](#), 850 F.3d 315 (7th Cir. 2017).

General personal jurisdiction did not exist over non-resident corporate entities associated with supermarket chain, in customers' putative class action for violations of California's Consumer Legal Remedies Act (CLRA), False Advertising Law (FAL), and Unfair Competition Law (UCL) and New York's General Business Law; entities were not incorporated in California and did not have their principal places of business in California, entities were incorporated in Texas and Delaware and had their principal places of business in Texas, and entities submitted sworn declaration that they did not have any employees in California, operate any stores in California, or design, manufacture, distribute, or sell any goods in California. [N.Y. General Business Law §§ 349, 350](#); [Cal. Bus. & Prof. Code §§ 17200 et seq., 17500 et seq.](#); [Cal. Civ. Code § 1750 et seq.](#) [Kellman v. Whole Foods Market, Inc.](#), 313 F. Supp. 3d 1031 (N.D. Cal. 2018).

To have standing under [Article III](#) to bring a state-law antitrust or related consumer protection claim in a price-fixing class action, a named plaintiff must have purchased the price-fixed product in the state under whose law he or she seeks to bring a claim. [U.S. Const. art. 3](#). [In re Capacitors Antitrust Litigation](#), 154 F. Supp. 3d 918 (N.D. Cal. 2015).

The elements of a claim under the Washington Consumer Protection Act (WCPA) are: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) impacting the public interest; (4) causing injury to the plaintiff's business or property; and (5) the injury is causally linked to the unfair or deceptive act. [Wash. Rev. Code Ann. § 19.86.010](#). [In re Carrier IQ, Inc.](#), 78 F. Supp. 3d 1051, 85 U.C.C. Rep. Serv. 2d 568 (N.D. Cal. 2015).

To demonstrate standing to seek prospective injunctive relief in a consumer protection class action, the named plaintiff must allege that he intends to purchase the product at issue in the future; allegations that a defendant's continuing conduct subjects unnamed class members to the alleged harm is insufficient if the named plaintiffs are themselves unable to demonstrate a likelihood of future injury. [Frenzel v. AliphCom](#), 76 F. Supp. 3d 999, 85 U.C.C. Rep. Serv. 2d 482 (N.D. Cal. 2014).

A plaintiff who has standing under California Unfair Competition Law's (UCL) lost money or property requirement will have suffered the requisite "damage" for purposes of establishing standing under California's Consumers Legal Remedies Act (CLRA). [Cal. Civ. Code § 1780\(a\)](#); [Cal. Bus. & Prof. Code § 17204](#). [Moore v. Apple, Inc.](#), 73 F. Supp. 3d 1191 (N.D. Cal. 2014).

Consumer lacked [Article III](#) standing to seek injunctive relief against cosmetics company in action for unjust enrichment, negligent misrepresentation, and violation of Florida's Deceptive and Unfair Trade Practice's Act (FDUPTA) alleging deceptive and misleading labeling against cosmetics company, based on company's alleged deceptive and misleading labeling of sunscreen, since although he alleged a past injury, he failed to sufficiently allege a threat of future harm. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#); [West's F.S.A. § 501.204](#). [Dapeer v. Neutrogena Corp.](#), 95 F. Supp. 3d 1366 (S.D. Fla. 2015).

To have standing to seek injunctive relief under the Georgia Uniform Deceptive Trade Practices Act (GUDTPA), a plaintiff must show that it is likely to be damaged in the future by some deceptive trade practice of the defendant. [West's Ga.Code Ann. § 10-1-373\(a\)](#). [Iler Group, Inc. v. Discrete Wireless, Inc.](#), 90 F. Supp. 3d 1329 (N.D. Ga. 2015).

A consumer bringing a claim under Hawaii's Unfair and Deceptive Trade Practices Act must allege: (1) a violation of the Act; (2) injury to plaintiff's business or property resulting from such violation; and (3) proof of the amount of damages. [HRS § 480–2](#). [Lizza v. Deutsche Bank Nat. Trust Co.](#), 1 F. Supp. 3d 1106 (D. Haw. 2014).

Consumer bringing private action under Maryland Consumer Protection Act (MCPA) must allege (1) unfair or deceptive practice or misrepresentation that is (2) relied upon, and (3) causes them actual injury. [West's Ann.Md.Code, Commercial Law, § 13–301\(14\)\(iii\)](#). [Bey v. Shapiro Brown & Alt, LLP](#), 997 F. Supp. 2d 310 (D. Md. 2014).

Consumer, who purchased beer, lacked standing to seek an injunction under the Massachusetts Consumer Protection Act as he did not allege a real and immediate threat of future injury, in putative class action alleging violations of the Act, arising from allegedly unlawful representations that the beer was brewed in Ireland, where consumer did not allege that he was likely to purchase that beer in the future. [U.S. Const. art. 3, § 2, cl. 1](#); [Mass. Gen. Laws Ann. ch. 93A, § 2](#). [O'Hara v. Diageo-Guinness, USA, Inc.](#), 306 F. Supp. 3d 441 (D. Mass. 2018).

Consumers who buy a product that they would not have purchased, absent a manufacturer's deceptive commercial practices, have not suffered an injury under New York statute prohibiting deceptive business practices. N.Y.McKinney's General Business Law § 349. [Weisblum v. Prophase Labs, Inc.](#), 88 F. Supp. 3d 283 (S.D. N.Y. 2015).

To state a claim for deceptive trade practices under New York law, a plaintiff must establish that: (1) the defendant engaged in an act that was directed at consumers; (2) the act engaged in was materially deceptive or misleading; and (3) the plaintiff was injured as a result of the defendant's act. N.Y.McKinney's General Business Law § 349. [Amos v. Biogen Idec Inc.](#), 28 F. Supp. 3d 164 (W.D. N.Y. 2014).

Former student did not have standing to bring claim for violation of Ohio Deceptive Trade Practices Act (ODTPA) against for-profit college; student was individual consumer and had not suffered commercial injury. [Ohio Rev. Code Ann. § 4165.03\(A\) \(1\)](#). [Borden v. Antonelli College](#), 304 F. Supp. 3d 678 (S.D. Ohio 2018).

To state a claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL), complaint must allege that plaintiff justifiably relied on the deceptive conduct. 73 P.S. §§ 201–3, 201–9.2(a). [Wilson v. Bank of America, N.A.](#), 48 F. Supp. 3d 787 (E.D. Pa. 2014).

Costs associated with employee's increased commute time after he was forced to work at a different site while his security clearance was reviewed following a cyber-attack and data breach at the payroll services provider used by his employer was not an injury in fact for purposes of [Article III](#) standing required to bring claim for breach of contract and violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL); costs were merely part of a reasonable reaction to a risk of harm. [U.S.C.A. Const. Art. 3, § 1 et seq.](#); 73 P.S. § 201–1 et seq. [Storm v. Paytime, Inc.](#), 90 F. Supp. 3d 359 (M.D. Pa. 2015).

To prevail on a Washington Consumer Protection Act (CPA) claim, a claimant must satisfy a five-part test: (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) that impacts the public interest, (4) which causes injury to the party in his business or property, and (5) which injury is causally linked to the unfair or deceptive act. [West's RCWA 19.86.010 et seq.](#) [HB Development, LLC v. Western Pacific Mut. Ins.](#), 86 F. Supp. 3d 1164, 90 Fed. R. Serv. 3d 1433 (E.D. Wash. 2015).

Courts will grant a defendant's motion to dismiss a claim under the West Virginia Consumer Credit and Protection Act (the WVCCPA) when then plaintiff's notice letter required under the WVCCPA fails even to mention it. [West's Ann.W.Va.Code, 46A–6–106\(b\)](#). [Bennett v. Skyline Corp.](#), 52 F. Supp. 3d 796, 84 U.C.C. Rep. Serv. 2d 947 (N.D. W. Va. 2014).

There are five elements to a private right of action under the Washington Consumer Protection Act (WCPA): (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) which affects the public interest, (4) injures the plaintiff in his business

or property, and (5) a showing of a causal link between the unfair or deceptive act or practice and the plaintiff's injury. [Wash. Rev. Code Ann. § 9A.82.001](#). [In re Residential Capital, LLC](#), 531 B.R. 1 (Bankr. S.D. N.Y. 2015).

Uniform Trade Practices and Consumer Protection Act (UTPA) does not apply to personal injury claims; statutory phrase "loss of money or property" does not include personal injury claims. AS 45.50.471. [Donahue v. Ledgends, Inc.](#), 331 P.3d 342 (Alaska 2014).

Uninsured patient lacked standing for his Consumers Legal Remedies Act (CLRA) misrepresentation cause of action against hospital operators and owners, based on patient's alleged beliefs that belief that operators and owners would bill him at the same rates as other patients signing the same contract and receiving similar emergency treatment, or that his bill would be for no more than the reasonable value of the treatment, where patient failed to allege he read and relied on the signed contracts or other representations by the operators and owners. [Cal. Civ. Code § 1780\(a\)](#). [Moran v. Prime Healthcare Management, Inc.](#), 3 Cal. App. 5th 1131, 208 Cal. Rptr. 3d 303 (4th Dist. 2016).

If any person invades a plaintiff's legally protected interests, and if that invasion causes the plaintiff a loss of money or property, the plaintiff is entitled to redress under consumer protection statute applicable to persons engaged in business. [M.G.L.A. c. 93A, § 11](#). [Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.](#), 469 Mass. 813, 17 N.E.3d 1066 (2014).

An injured party was permitted to bring a consumer fraud claim under the Consumer Fraud Act (CFA) for damages under the Private Attorney General statute for conduct that violated the pricing provision of the Pharmacy Practice Act; the Private Attorney General statute provided that any person injured by a violation of several enumerated statutes, including the CFA, could bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and the fact that the Pharmacy Practice Act did not provide a private cause of action did not bar a plaintiff from bringing a consumer fraud claim, provided that the alleged conduct was proscribed under the CFA. M.S.A. §§ 8.31, 151.21(4), 325F.69. [Graphic Communications Local 1B Health & Welfare Fund A v. CVS Caremark Corp.](#), 850 N.W.2d 682 (Minn. 2014).

In order to establish a prima facie claim for unfair trade practices, a plaintiff must show: (1) defendant committed an unfair or deceptive act or practice; (2) the action in question was in or affecting commerce; and (3) the act proximately caused injury to the plaintiff. West's [N.C.G.S.A. § 75-1.1](#). [Weaver Inv. Co. v. Pressly Development Associates](#), 760 S.E.2d 755 (N.C. Ct. App. 2014).

The ascertainable loss in a private claim under the Unlawful Trade Practices Act (UTPA) must be a "result of" the unlawful trade practice; that is, the unlawful trade practice must have caused the ascertainable loss that the plaintiff suffered. [West's Or.Rev. Stat. Ann. §§ 31.710\(2\)\(a\), 646.638\(1\)](#). [Pearson v. Philip Morris, Inc.](#), 358 Or. 88, 361 P.3d 3 (2015).

The deprivation of contracted-for insurance benefits is an injury to business or property, as could give rise to cognizable claim by insured against insurer for violation of Consumer Protection Act (CPA), regardless of the type of benefits secured by policy. [Wash. Rev. Code Ann. § 19.86.090](#). [Peoples v. United Services Automobile Association](#), 452 P.3d 1218 (Wash. 2019).

The injury element of the Consumer Protection Act (CPA) can be met even where the injury alleged is both minimal and temporary. [West's RCWA 19.86.090](#). [Frias v. Asset Foreclosure Services, Inc.](#), 334 P.3d 529 (Wash. 2014).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

1 Skalla v. Canepari, 2013 Ark. 415, 2013 WL 5761063 (2013); Birtha v. Stonemor, North Carolina, LLC,
 2 727 S.E.2d 1 (N.C. Ct. App. 2012), review denied, 366 N.C. 570, 738 S.E.2d 373 (2013).
 3 McLaughlin v. LVNV Funding, LLC, 2013 WL 4782173 (N.D. Ill. 2013) (applying Illinois Collection
 4 Agency Act); Fernandez v. Peter J. Craig & Associates, P.C., 2013 WL 6383007 (E.D. N.Y. 2013) (applying
 5 New York Debt Collection law).
 6 Skalla v. Canepari, 2013 Ark. 415, 2013 WL 5761063 (2013); Barbara's Sales, Inc. v. Intel Corp., 227 Ill.
 7 2d 45, 316 Ill. Dec. 522, 879 N.E.2d 910 (2007).
 8 Barksdale v. Wilkowsky, 192 Md. App. 366, 994 A.2d 996 (2010), judgment rev'd on other grounds, 419 Md.
 9 649, 20 A.3d 765 (2011); Bavand v. OneWest Bank, F.S.B., 176 Wash. App. 475, 309 P.3d 636 (Div. 1 2013).
 10 Durell v. Sharp Healthcare, 183 Cal. App. 4th 1350, 108 Cal. Rptr. 3d 682 (4th Dist. 2010); Cheramie
 11 Services, Inc. v. Shell Deepwater Production, Inc., 35 So. 3d 1053 (La. 2010); Rathgeber v. James
 12 Hemenway, Inc., 335 Or. 404, 69 P.3d 710 (2003).
 13 Lee v. Carter-Reed Co., L.L.C., 203 N.J. 496, 4 A.3d 561 (2010).
 14 Muir v. Playtex Products, LLC, 2013 WL 5941067 (N.D. Ill. 2013) (standing upheld applying Illinois law).
 15 Standing requires an allegation or proof of a personal, individual loss or injury as where a buyer is forced
 16 to pay more than he or she would have otherwise. Kwikset Corp. v. Superior Court, 51 Cal. 4th 310, 120
 Cal. Rptr. 3d 741, 246 P.3d 877 (2011).
 MacNeil Automotive Products, Ltd. v. Cannon Automotive Ltd., 715 F. Supp. 2d 786, 88 A.L.R.6th 701
 (N.D. Ill. 2010) (applying Illinois law); Robertson v. GMAC Mortg. LLC, 2013 WL 6017482 (W.D. Wash.
 2013) (applying Washington law).
 Buetow v. A.L.S. Enterprises, Inc., 888 F. Supp. 2d 956 (D. Minn. 2012) (applying Minnesota law).
 § 297.
 Ameriquest Mortg. Co. v. Office of Attorney General of Washington, 177 Wash. 2d 467, 300 P.3d 799 (2013).
 Louisburg Bldg. & Development Co., L.L.C. v. Albright, 45 Kan. App. 2d 618, 252 P.3d 597 (2011), review
 granted, (Mar. 9, 2012).
 Hall v. Walter, 969 P.2d 224 (Colo. 1998).
 § 297.
 Curtis v. Altria Group, Inc., 813 N.W.2d 891 (Minn. 2012).
 Curtis v. Altria Group, Inc., 813 N.W.2d 891 (Minn. 2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 300

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XI. State Legislation on Consumer Protection and Unfair or Deceptive Trade Practices

B. Enforcement and Remedies

2. Private Enforcement

§ 300. Damages and other remedies; attorney's fees and costs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  388 to 393

A.L.R. Library

[Award of attorneys' fees in actions under state deceptive trade practice and consumer protection acts, 35 A.L.R.4th 12](#)

State consumer protection statutes generally provide for awards of actual or compensatory damages,¹ plus damages as a multiple of actual damages, if the statutory prerequisites are met,² and the statute may provide for exemplary³ or punitive damages.⁴

Practice Tip:

A private plaintiff may be required to choose between a statutory civil penalty and an award of damages under the statute but may recover both the penalty and common-law damages.⁵

A remedy of restitution is available to the private plaintiff,⁶ and disgorgement is available to the extent that it constitutes restitution.⁷ Under some statutes, the plaintiff's remedy is limited to injunctive relief and restitution.⁸

The statutes may allow the prevailing party to recover reasonable attorney's fees⁹ and costs¹⁰ although some provisions allow neither.¹¹

CUMULATIVE SUPPLEMENT

Cases:

Calculation of restitution under California's Unfair Competition Law (UCL) or Fair Advertising Law (FAL) need not account for benefits received after purchase, because the focus is on the value of the service at the time of purchase, but the calculation will focus on the difference between what was paid and what a reasonable consumer would have paid at the time of purchase without the fraudulent or omitted information. [West's Ann.Cal.Bus. & Prof.Code §§ 17200 et seq., 17500 et seq. Pulaski & Middleman, LLC v. Google, Inc., 802 F.3d 979, 92 Fed. R. Serv. 3d 1200 \(9th Cir. 2015\).](#)

Insureds' could seek treble damages under the Tennessee Consumer Protection Act for insurer's alleged unfair practices in denying coverage on ground that insureds had intentionally set the fire that destroyed their home, based on conduct occurring during the pendency of their suit against insurer. [West's T.C.A. § 47-18-101 et seq. American Nat. Property and Cas. Co. v. Stutte, 105 F. Supp. 3d 849 \(E.D. Tenn. 2015\).](#)

To establish injury to business or property under the Washington Consumer Protection Act (CPA), monetary damages need not be proved; unquantifiable damages may suffice. [West's RCWA 19.86.010 et seq. Cousineau v. Microsoft Corp., 992 F. Supp. 2d 1116 \(W.D. Wash. 2012\).](#)

Where a plaintiff can demonstrate that it has suffered actual damages, i.e., a concrete loss of money or property, consumer protection statute applicable to persons engaged in business does not impose a further requirement that the plaintiff establish outstanding uncompensated loss. [M.G.L.A. c. 93A, § 11. Auto Flat Car Crushers, Inc. v. Hanover Ins. Co., 469 Mass. 813, 17 N.E.3d 1066 \(2014\).](#)

Trial court acted within its discretion in awarding attorney fees in amount of \$99,000 to prevailing customer, rather than \$190,000, in customer's action against contractor under Deceptive Trade Practices Act (DTPA); jury had awarded damages in amount less than that sought by customer, and jury found that contractor did not knowingly or intentionally violate DTPA. [Tex. Bus. & C. Code § 17.50\(d\). 338 Industries, LLC v. Point Com, LLC, 530 S.W.3d 729 \(Tex. App. Amarillo 2017\), reh'g overruled, \(Aug. 29, 2017\) and petition for review filed, \(Nov. 13, 2017\).](#)

Contractual provision limiting contractor's liability to customer to amount actually paid to contractor by customer did not include limitation on award of attorney fees to customer in customer's action under Deceptive Trade Practices Act (DTPA), where provision contained no reference to attorney fees. [Tex. Bus. & C. Code § 17.50\(d\). 338 Industries, LLC v. Point Com, LLC, 530 S.W.3d 729 \(Tex. App. Amarillo 2017\), reh'g overruled, \(Aug. 29, 2017\) and petition for review filed, \(Nov. 13, 2017\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [North State Autobahn, Inc. v. Progressive Ins. Group Co.](#), 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012). All forms of compensatory relief are allowed. [Blankenship v. CFMOTO Powersports, Inc.](#), 161 Ohio Misc. 2d 5, 2011-Ohio-948, 944 N.E.2d 769 (C.P. 2011).
- 2 [Kraft Power Corp. v. Merrill](#), 464 Mass. 145, 981 N.E.2d 671 (2013); [Garber v. STS Concrete Co., L.L.C.](#), 2013-Ohio-2700, 991 N.E.2d 1225 (Ohio Ct. App. 8th Dist. Cuyahoga County 2013); [Smith v. Stockdale](#), 166 Wash. App. 557, 271 P.3d 917 (Div. 3 2012), review denied, 174 Wash. 2d 1013, 281 P.3d 687 (2012). The purpose of a trebling of damages is to punish the wrongdoer, not to make the defrauded customer whole. [Furst v. Einstein Moomjy, Inc.](#), 182 N.J. 1, 860 A.2d 435 (2004).
A trebling of damages is available under the act, in contrast with recovery for fraudulent inducement to a contract. [TradeWinds Airlines, Inc. v. C-S Aviation Services](#), 733 S.E.2d 162 (N.C. Ct. App. 2012), review denied, 743 S.E.2d 189 (N.C. 2013).
- 3 [L'Esperance v. Benware](#), 175 Vt. 292, 2003 VT 43, 830 A.2d 675 (2003) (malice required).
The plaintiff cannot recover both exemplary and statutory treble damages. [Plath v. Schonrock](#), 2003 MT 21, 314 Mont. 101, 64 P.3d 984 (2003).
- 4 [North State Autobahn, Inc. v. Progressive Ins. Group Co.](#), 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012); [PPG Industries, Inc. v. JMB/Houston Centers Partners Ltd. Partnership](#), 146 S.W.3d 79, 54 U.C.C. Rep. Serv. 2d 166 (Tex. 2004).
The multiple damages authorized by statute are punitive damages. [Drywall Systems, Inc. v. ZVI Const. Co., Inc.](#), 435 Mass. 664, 761 N.E.2d 482 (2002).
- 5 [Louisburg Bldg. & Development Co., L.L.C. v. Albright](#), 45 Kan. App. 2d 618, 252 P.3d 597 (2011), review granted, (Mar. 9, 2012).
- 6 [State ex rel. Horne v. AutoZone, Inc.](#), 229 Ariz. 358, 275 P.3d 1278 (2012).
- 7 [Nelson v. Pearson Ford Co.](#), 186 Cal. App. 4th 983, 112 Cal. Rptr. 3d 607 (4th Dist. 2010).
- 8 [Rose v. Bank of America, N.A.](#), 57 Cal. 4th 390, 159 Cal. Rptr. 3d 693, 304 P.3d 181 (2013), petition for cert. filed, 82 U.S.L.W. 3349 (U.S. Nov. 27, 2013).
- 9 [Duspiva v. Fillmore](#), 154 Idaho 27, 293 P.3d 651 (2013); [Kraft Power Corp. v. Merrill](#), 464 Mass. 145, 981 N.E.2d 671 (2013); [North State Autobahn, Inc. v. Progressive Ins. Group Co.](#), 102 A.D.3d 5, 953 N.Y.S.2d 96 (2d Dep't 2012).
The award is discretionary. [Creative Masonry and Chimney, LLC v. Johnson](#), 142 Conn. App. 135, 64 A.3d 359 (2013), certification denied, 309 Conn. 903, 68 A.3d 658 (2013).
Actual damages are not a prerequisite. [Beer v. Bennett](#), 160 N.H. 166, 993 A.2d 765, 71 U.C.C. Rep. Serv. 2d 507 (2010).
- 10 [Smith v. Stockdale](#), 166 Wash. App. 557, 271 P.3d 917 (Div. 3 2012), review denied, 174 Wash. 2d 1013, 281 P.3d 687 (2012).
- 11 [Rose v. Bank of America, N.A.](#), 57 Cal. 4th 390, 159 Cal. Rptr. 3d 693, 304 P.3d 181 (2013), petition for cert. filed, 82 U.S.L.W. 3349 (U.S. Nov. 27, 2013).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection Two XII Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.


Part Two. State Legislation; Uniform Laws

XII. State Consumer Credit Legislation

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Consumer Credit  1 to 3.1, 10, 16 to 20

A.L.R. Library

A.L.R. Index, Collections

A.L.R. Index, Consumer Protection

A.L.R. Index, Credit

A.L.R. Index, Credit Charges

West's A.L.R. Digest, Consumer Credit  1 to 3.1, 10, 16 to 20

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 301

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XII. State Consumer Credit Legislation

§ 301. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  1 to 3.1

States have enacted legislation regulating consumer credit¹ to protect consumers from predatory² and impermissible actions of lenders³ and unconscionable terms in consumer credit agreements.⁴ In some instances, the state statutes are modeled on federal statutes, like the Equal Credit Opportunity Act⁵ or the Truth in Lending Act.⁶

The validity of state consumer credit statutes has survived a variety of constitutional challenges,⁷ but some statutes or provisions are preempted by federal law.⁸

State consumer credit statutes are subject to a liberal interpretation to carry out their purpose of consumer protection, resolving uncertainties where possible in favor of this objective⁹ as may require construction in accord with the comparable federal consumer credit statute.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

"Surcharge," under New York statute prohibiting a merchant from imposing a surcharge for a credit card transaction, means, in the context of a single-sticker regime, in which a merchant lists one price and a separate surcharge amount, a charge in excess of the sticker price. [McKinney's General Business Law § 518](#). [Expressions Hair Design v. Schneiderman](#), 137 S. Ct. 1144 (2017).

New York statute prohibiting a merchant from imposing a surcharge for a credit card transaction regulated speech, with respect to a single-sticker regime, in which a merchant listed one price and a separate surcharge amount; the statute was not a typical regulation of non-speech conduct regarding pricing, since the statute told merchants nothing about the amount they were allowed to collect from a customer paying in cash or by credit card, and instead, the statute regulated how merchants could communicate their prices. [U.S.C.A. Const.Amend. 1](#); [McKinney's General Business Law § 518](#). [Expressions Hair Design v. Schneiderman](#), 137 S. Ct. 1144 (2017).

New York statute prohibiting a merchant from imposing a surcharge for a credit card transaction was not unconstitutionally vague, as applied to merchants who wanted to price under a single-sticker regime, by listing one price and a separate surcharge amount; the statute clearly proscribed a single-sticker regime. [McKinney's General Business Law § 518](#). [Expressions Hair Design v. Schneiderman](#), 137 S. Ct. 1144 (2017).

New York statute prohibiting sellers in sales transactions from imposing a surcharge or swipe fee on customers who elected to pay with a credit card did not violate the First Amendment as applied to sellers who wished to post only a single price for their goods and services and charge more than that price to credit-card customers; statute regulated a pricing practice, not speech. [U.S.C.A. Const.Amend. 1](#); [N.Y.McKinney's General Business Law § 518](#). [Expressions Hair Design v. Schneiderman](#), 803 F.3d 94 (2d Cir. 2015).

Florida statute, making it a misdemeanor to impose a surcharge on a buyer for electing to use a credit card, regulated speech, as opposed to conduct, and thus was subject to First Amendment analysis; statute, in allowing merchants to engage in dual-pricing so long as they offered only cash discounts, while forbidding credit-card surcharges, governed only how to express relative values, imposing criminal liability for making the wrong choice between equally plausible alternative descriptions of an objective reality. [U.S.C.A. Const.Amend. 1](#); [West's F.S.A. § 501.0117](#). [Dana's R.R. Supply v. Attorney General, Florida](#), 807 F.3d 1235 (11th Cir. 2015).

Even if there existed viable basis for the State's interests, Texas' Anti-Surcharge Law, prohibiting merchants from imposing surcharges for credit card purchases, was more extensive than was necessary to serve that interest for purposes of an as-applied First Amendment free speech challenge to the Law brought by merchants; if Texas was concerned that surcharges would result in profiteering, Texas could cap the difference in price that could be charged to customers paying with cash and those using credit cards. [U.S. Const. Amend. 1](#); [V.T.C.A., Finance Code § 339.001\(a\)](#). [Rowell v. Paxton](#), 336 F. Supp. 3d 724 (W.D. Tex. 2018).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Pineda v. Williams-Sonoma Stores, Inc.](#), 51 Cal. 4th 524, 120 Cal. Rptr. 3d 531, 246 P.3d 612 (2011); [Ford Motor Credit Co., LLC v. Roberson](#), 420 Md. 649, 25 A.3d 110 (2011); [Mountain State College v. Holsinger](#), 230 W. Va. 678, 742 S.E.2d 94, 292 Ed. Law Rep. 1100 (2013).
- 2 [Gulfco of Louisiana, Inc. v. Brantley](#), 2013 Ark. 367, 2013 WL 5497308 (2013); [Balsam v. Fioriglio](#), 30 Misc. 3d 400, 914 N.Y.S.2d 863 (Sup 2010).
- 3 [Benner v. Bank of America, N.A.](#), 917 F. Supp. 2d 338 (E.D. Pa. 2013) (applying Pennsylvania law); [Harper v. Jackson Hewitt, Inc.](#), 227 W. Va. 142, 706 S.E.2d 63 (2010).
- 4 [Gulfco of Louisiana, Inc. v. Brantley](#), 2013 Ark. 367, 2013 WL 5497308 (2013); [Quicken Loans, Inc. v. Brown](#), 230 W. Va. 306, 737 S.E.2d 640 (2012).
- 5 [Capitol Indem. Corp. v. Aulakh](#), 313 F.3d 200 (4th Cir. 2002) (applying Virginia law).
- 6 [In re Smith-Pena](#), 484 B.R. 512 (Bankr. D. Mass. 2013) (applying Massachusetts law).
- 7 [Quik Payday, Inc. v. Stork](#), 549 F.3d 1302 (10th Cir. 2008) (applying Kansas law); [Pineda v. Williams-Sonoma Stores, Inc.](#), 51 Cal. 4th 524, 120 Cal. Rptr. 3d 531, 246 P.3d 612 (2011).

- 8 [In re Thomas](#), 447 B.R. 402 (Bankr. D. Mass. 2011) (Massachusetts statute).
- 9 [Cromwell v. Countrywide Home Loans, Inc.](#), 483 B.R. 36 (D. Mass. 2012) (applying Massachusetts law).
- 10 [In re DiVittorio](#), 670 F.3d 273 (1st Cir. 2012) (applying Massachusetts law); [Vogel v. Onyx Acceptance Corp.](#), 2011 WY 163, 267 P.3d 1057 (Wyo. 2011).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 302

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.


Part Two. State Legislation; Uniform Laws

XII. State Consumer Credit Legislation

§ 302. Disclosure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

Forms

Forms relating to new account disclosures, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

Forms relating to disclosing finance charge or disclosing change in terms, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

State statutes applicable to credit sales are enacted to ensure meaningful disclosure of credit terms.¹ The statutes require the seller or lender to clearly disclose in the contract the amount of the loan or debt, together with all charges and allowances, the balance that will actually have to be paid,² and such particulars as finance charges, annual percentage rates of interest,³ finance charges not technically classifiable as interest, the differences between the cash price and the credit price or the "time-price differential,"⁴ tax charges or costs,⁵ insurance costs,⁶ and the borrower's rights,⁷ including rescission rights.⁸ All items of cost must be disclosed in a single document,⁹ making clear and accurate disclosures of terms.¹⁰

Special disclosures may be required for particular types of financing, such as a "high-cost" loan including a "balloon payment."¹¹ Disclosure may not be required for certain fees that are not incident to the extension of credit, and do not constitute credit service charges, such as fees for particular modes of payment.¹²

State disclosure statutes require a statement of the security given by the lender or buyer, and a failure to satisfy this requirement has been held a violation of the statutes,¹³ but the statutes do not serve to prescribe what is or is not included in the security interest.¹⁴

State disclosure statutes generally distinguish requirements applicable to commercial loans as opposed to consumer loans.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Under Massachusetts law, a consumer lease must satisfy two statutory requirements to trigger Retail Installment Sales and Services Act (RISSA) disclosure protections: (1) the lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the value of goods involved, and (2) it is agreed that the lessee will become, or for no other or for a nominal consideration has the option to become the owner of the goods upon full compliance with his obligations under the contract. *M.G.L.A. c. 255D, § 1. Philibotte v. Nisource Corporate Services Co.*, 793 F.3d 159 (1st Cir. 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 *In re DiVittorio*, 430 B.R. 26 (Bankr. D. Mass. 2010) subsequently *aff'd*, 670 F.3d 273 (1st Cir. 2012) (applying Massachusetts law).
- 2 *Patrick v. PHH Mortg. Corp.*, 937 F. Supp. 2d 773 (N.D. W. Va. 2013) (applying West Virginia law); *Bengal Motor Co., Ltd. v. Cuello*, 121 So. 3d 57 (Fla. 3d DCA 2013).
The installment sales act requires disclosure of the charges that make up the total price the consumer pays. *In re Howard*, 597 F.3d 852, 71 U.C.C. Rep. Serv. 2d 97 (7th Cir. 2010) (applying Illinois law).
- 3 *Bengal Motor Co., Ltd. v. Cuello*, 121 So. 3d 57 (Fla. 3d DCA 2013); *Vogel v. Onyx Acceptance Corp.*, 2011 WY 163, 267 P.3d 1057 (Wyo. 2011).
- 4 *Brunelle Aluminum Products, Inc. v. Caron*, 113 N.H. 730, 313 A.2d 736 (1973).
- 5 *Rivers v. Charlie Thomas Ford, Ltd.*, 289 S.W.3d 353 (Tex. App. Houston 14th Dist. 2009).
- 6 *Nelson v. Pearson Ford Co.*, 186 Cal. App. 4th 983, 112 Cal. Rptr. 3d 607 (4th Dist. 2010).
- 7 *Vogel v. Onyx Acceptance Corp.*, 2011 WY 163, 267 P.3d 1057 (Wyo. 2011).
- 8 *Cromwell v. Countrywide Home Loans, Inc.*, 483 B.R. 36 (D. Mass. 2012) (applying Massachusetts law).
- 9 *Pierce v. Western Sur. Co.*, 207 Cal. App. 4th 83, 143 Cal. Rptr. 3d 152 (5th Dist. 2012), review denied, (Sept. 12, 2012).
- 10 *Vogel v. Onyx Acceptance Corp.*, 2011 WY 163, 267 P.3d 1057 (Wyo. 2011).
- 11 *Balsam v. Fioriglio*, 30 Misc. 3d 400, 914 N.Y.S.2d 863 (Sup 2010).
- 12 *Vogel v. Onyx Acceptance Corp.*, 2011 WY 163, 267 P.3d 1057 (Wyo. 2011).
- 13 *Public Finance Corp. v. Riddle*, 83 Ill. App. 3d 417, 38 Ill. Dec. 712, 403 N.E.2d 1316 (3d Dist. 1980).
- 14 *In re Howard*, 597 F.3d 852, 71 U.C.C. Rep. Serv. 2d 97 (7th Cir. 2010) (applying Illinois law).
- 15 *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 36 A.3d 399 (2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 303

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.


Part Two. State Legislation; Uniform Laws

XII. State Consumer Credit Legislation

§ 303. Late charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 10

A.L.R. Library

[Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50](#)

Late charges or similar assessments for delay in making periodic payments on notes, mortgages, or installment-sale contracts are subject to state consumer credit statutes,¹ and are generally treated as provisions for interest, or additional interest, on the obligation,² although in some jurisdictions, late charges are governed by a usury statute and not a consumer finance statute.³

Observation:

Late charges imposed on nonpayment for services rendered, only on an "actual unanticipated default in payment," are not credit service charges since the charge is not in the character of interest.⁴

The remedies under a state consumer credit act apply to unlawful late fees in violation of the statute,⁵ or material misrepresentations or concealments in regard to late fee assessments, if the prerequisites for recovery are met.⁶

The compounding of late fees is appropriate if the parties' contract and the applicable statute unambiguously allow it.⁷

CUMULATIVE SUPPLEMENT

Cases:

Massachusetts statute authorizing certain creditors to collect a delinquency charge "on any payment not paid in full within fifteen days of its due date," plainly authorizes the delinquency charge when payment issues electronically within the time period but reaches the creditor after the time period. [M.G.L.A. c. 140, § 114B. *Clermont v. Monster Worldwide, Inc.*, 102 F. Supp. 3d 353 \(D. Mass. 2015\).](#)

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Stroman v. Bank of America Corp.](#), 852 F. Supp. 2d 1366 (N.D. Ga. 2012) (applying Georgia law); [Patrick v. PHH Mortg. Corp.](#), 937 F. Supp. 2d 773 (N.D. W. Va. 2013) (applying West Virginia law); [Davis v. Ford Motor Credit Co.](#), 179 Cal. App. 4th 581, 101 Cal. Rptr. 3d 697 (2d Dist. 2009); [Miller v. Parker McCurley Properties, L.L.C.](#), 36 So. 3d 1234 (Miss. 2010); [Overboe v. Brodshaug](#), 2008 ND 112, 751 N.W.2d 177 (N.D. 2008).
- 2 [Moore v. Lomas Mortg. USA](#), 796 F. Supp. 300 (N.D. Ill. 1992) (applying Illinois law); [Allied Finance Co. v. Rodriguez](#), 869 S.W.2d 567 (Tex. App. Corpus Christi 1993).
- 3 [Cantrell v. Walker Builders, Inc.](#), 678 So. 2d 169 (Ala. Civ. App. 1996).
- 4 [Iberlin v. TCI Cablevision of Wyoming, Inc.](#), 855 P.2d 716 (Wyo. 1993).
- 5 [In re O'Brien](#), 423 B.R. 477 (Bankr. D. N.J. 2010), [aff'd](#), 2010 WL 4703781 (D.N.J. 2010) (applying New Jersey law); [Miller v. Parker McCurley Properties, L.L.C.](#), 36 So. 3d 1234 (Miss. 2010).
- 6 [Collins v. Am.'s Servicing Co.](#), 652 F.3d 711 (7th Cir. 2011) (applying Indiana law).
- 7 [In re Graboyes](#), 371 B.R. 113 (Bankr. E.D. Pa. 2007) (applying Pennsylvania law).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 304

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XII. State Consumer Credit Legislation

§ 304. Remedies for noncompliance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  17 to 20

Forms

Forms relating to rescission, generally, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts; Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [[Westlaw® Search Query](#)]

Under a state consumer credit statute, a lender's breach of the statute by unconscionable conduct¹ or failure to comply in any substantial respect with the statutory requirements,² such as the disclosure requirements for an installment-sales contract, renders the obligation of the borrower or purchaser unenforceable³ or renders the unlawful interest provision unenforceable.⁴ While the violation may, under some statutes, relieve the debtor of any obligation to pay the remaining principal and interest on the loan,⁵ other statutes may preclude a cancellation of the underlying debt even though the agreement is unenforceable.⁶

Rescission may be available to a buyer for the seller's noncompliance with the disclosure statute, without a showing of economic damage to the buyer,⁷ thereby voiding the creditor's security interest,⁸ but the remedy requires that the buyer restore to the seller all the benefits the buyer received under the contract.⁹

Practice Tip:

The effect of a nondisclosure may be an automatic extension of the time allowed for rescission to a statutory period exceeding the contract terms.¹⁰

A state statute affording consumer credit protection and requiring disclosures may enable a consumer to recover a monetary penalty for a violation.¹¹ Statutory damages may be awarded for a seller's violation of credit requirements as for willful overcharges.¹² Damages for nondisclosure may be limited to actual damages and are not awarded on a mere technical violation without resulting damages.¹³ Statutory damages may vary depending on the severity or willfulness of the violation, particularly absent a showing of actual loss.¹⁴ Offsets against the buyer's damages are allowed to the extent of any depreciation in the value of the purchased goods.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Under Maryland law, a debtor's relief under Credit Grantor Closed End Credit Provisions (CLEC) is limited to any amounts paid in excess of the principal amount of the loan. [West's Ann.Md.Code, Commercial Law, § 12-1018\(a\)\(2\)](#). [Gardner v. GMAC, Inc.](#), 796 F.3d 390 (4th Cir. 2015).

The cancellation and rescission of an executory contract, as a remedy for the seller's omission of the statutory notice in the contract that the contract represents the final agreement between the parties that may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements, is not intended to be punitive, but merely provides the buyer the option of unwinding the transaction; consequently, the remedy contemplates mutual restitution of benefits among parties, and the buyer must restore to the seller supplemental enrichment in the form of rent for the buyer's interim occupation of the property upon cancellation and rescission of the contract for deed. [Tex. Prop. Code Ann. § 5.072\(d\), \(e\)\(2\)](#). [Smith v. Davis](#), 462 S.W.3d 604 (Tex. App. Tyler 2015), reh'g overruled, (May 7, 2015) and review denied, (July 3, 2015).

[END OF SUPPLEMENT]

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Moore](#), 470 B.R. 390 (Bankr. S.D. W. Va. 2012) (applying West Virginia law).
- 2 [Odell v. Legal Bucks, LLC](#), 192 N.C. App. 298, 665 S.E.2d 767 (2008); [Bunch v. Terpenning](#), 2009 OK CIV APP 106, 229 P.3d 574 (Div. 4 2009).
- 3 [In re Hollingworth](#), 453 B.R. 32 (Bankr. D. Mass. 2011) (applying Massachusetts law).
- 4 [Seidling v. Roedl](#), 2010 WI App 19, 323 Wis. 2d 278, 779 N.W.2d 724 (Ct. App. 2009).

- 5 LaSalle Bank, N.A. v. Shearon, 19 Misc. 3d 433, 850 N.Y.S.2d 871 (Sup 2008), adhered to on reargument,
23 Misc. 3d 959, 881 N.Y.S.2d 599 (Sup 2009); Bunch v. Terpenning, 2009 OK CIV APP 106, 229 P.3d
574 (Div. 4 2009).
- 6 Quicken Loans, Inc. v. Brown, 230 W. Va. 306, 737 S.E.2d 640 (2012).
- 7 Rojas v. Platinum Auto Group, Inc., 212 Cal. App. 4th 997, 151 Cal. Rptr. 3d 562 (2d Dist. 2013).
- 8 Cromwell v. Countrywide Home Loans, Inc., 483 B.R. 36 (D. Mass. 2012) (applying Massachusetts law).
- 9 Kelly v. Deutsche Bank Nat. Trust Co., 789 F. Supp. 2d 262 (D. Mass. 2011) (applying Massachusetts law);
Morton v. Nguyen, 412 S.W.3d 506 (Tex. 2013).
- 10 In re Bettano, 440 B.R. 13 (Bankr. D. Mass. 2010) (applying Massachusetts law).
- 11 Berryhill v. Rich Plan of Pensacola, 578 F.2d 1092, 46 A.L.R. Fed. 642 (5th Cir. 1978).
- 12 N. Shore Auto Financing, Inc. v. Block, 188 Ohio App. 3d 48, 2010-Ohio-2447, 934 N.E.2d 381 (8th Dist.
Cuyahoga County 2010).
- 13 Bengal Motor Co., Ltd. v. Cuello, 121 So. 3d 57 (Fla. 3d DCA 2013).
- 14 Scott v. Forest Lake Chrysler-Plymouth-Dodge, 668 N.W.2d 45 (Minn. Ct. App. 2003).
- 15 Nelson v. Pearson Ford Co., 186 Cal. App. 4th 983, 112 Cal. Rptr. 3d 607 (4th Dist. 2010).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.

17 Am. Jur. 2d Consumer Protection Two XIII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Consumer Credit  1 to 4

A.L.R. Library

A.L.R. Index, Uniform Consumer Credit Code

West's A.L.R. Digest, Consumer Credit  1 to 4

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 305

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 305. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  1 to 3.1

A.L.R. Library

[Regulation of Consumer Credit Sales and Consumer Leases Under Uniform Consumer Credit Code, 79 A.L.R.6th 211](#)

The Uniform Consumer Credit Code¹ was first approved in 1968, but because of problems experienced in states that had adopted it, a new version of the Code was promulgated in 1974 with the view of taking a new approach to the law governing consumer credit.² The Code contains seven articles.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code §§ 1.101 to 9.103.](#)
- ² [Comments of the National Conference of Commissioners on Uniform State Laws, prefatory to the 1974 Uniform Consumer Credit Code.](#)
- ³ [Uniform Commercial Credit Code Articles 1 to 6, 9.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 306

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 306. Purpose and construction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 2

In promulgating the 1974 version of the Uniform Consumer Credit Code, the National Conference recognized that Congress, in enacting the Federal Truth in Lending Act, moved into a major area of consumer credit, particularly with regard to disclosures to be made to consumers, and concluded that the field of disclosure had been preempted by federal law and that the states should not attempt to remain in this field; consequently, the 1974 Code contains few substantive disclosure provisions and simply requires that there be compliance with federal law in this respect.¹ A stated purpose of the Code is to conform the regulation of disclosure in consumer credit transactions to the Federal Truth in Lending Act.²

Other underlying purposes and policies of the Code are:

- (1) to simplify, clarify, and modernize the law governing consumer credit and usury;
- (2) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (3) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at a reasonable cost;
- (4) to protect consumers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (5) to permit and encourage the development of fair and economically sound consumer credit practices; and

(6) to make uniform the law, including administrative rules, among the various jurisdictions.³

The Code is to be liberally construed and applied to promote its underlying purposes and policies.⁴

Unless displaced by the particular provisions of the Uniform Consumer Credit Code, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement the Code provisions.⁵ For example, if there is a default in a secured transaction, the rights of the creditor are controlled by the Uniform Commercial Code.⁶ In the event of inconsistency between the Uniform Commercial Code and the Uniform Consumer Credit Code, the provisions of the latter control.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- | | |
|---|---|
| 1 | Comments of the National Conference of Commissioners on Uniform State Laws, prefatory to the 1974 Uniform Consumer Credit Code. |
| 2 | Unif. Consumer Credit Code § 1.102(2)(f). |
| 3 | Unif. Consumer Credit Code § 1.102(2). |
| 4 | Unif. Consumer Credit Code § 1.102(1). |
| 5 | Unif. Consumer Credit Code § 1.103. |
| 6 | Kelley v. Commercial Nat. Bank, 235 Kan. 45, 678 P.2d 620, 38 U.C.C. Rep. Serv. 697 (1984). |
| 7 | Unif. Consumer Credit Code § 1.103. |

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 307

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 307. Definitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2, 3.1

A.L.R. Library

[Regulation of Consumer Credit Sales and Consumer Leases Under Uniform Consumer Credit Code, 79 A.L.R.6th 211](#)

Trial Strategy

[Violation of the Truth-in-Lending Act and Regulation Z, 73 Am. Jur. Proof of Facts 3d 275](#)

[Equipment Lease As Usurious Loan, 25 Am. Jur. Proof of Facts 2d 521](#)

Forms

Forms and form drafting principles relating to Uniform Consumer Credit Code, generally, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts [\[Westlaw®: Search Query\]](#)

The Uniform Consumer Credit Code contains a number of definitions¹—

- a "consumer" is the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.²
- a "creditor" is a person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his or her assignor. In case of credit granted pursuant to a credit card, "creditor" means the card issuer, and not another person honoring the credit card.³
- a "consumer credit transaction" is a consumer credit sale or consumer loan or a refinancing or consolidation of a consumer credit sale or consumer loan, or a consumer lease.⁴
- a "consumer credit sale" is (with certain exceptions) a sale of goods, services, or an interest in land in which credit is granted, either pursuant to a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind; the buyer is an individual; the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose; the debt is payable in installments or a finance charge is made; and, with respect to a sale of goods or services, the amount financed does not exceed \$25,000. A sale of real estate in which the finance charge is 12% or less is not a consumer credit sale.⁵
- "consumer lease" is (with certain exceptions) a lease of goods which a lessor regularly engaged in the business of leasing makes to an individual, who takes under the lease primarily for a personal, family, household, or agricultural purpose; in which the amount payable under the lease does not exceed \$25,000; which is for a term exceeding four months; and which is not made pursuant to a lender credit card.⁶
- a "consumer loan" is (with certain exceptions) a loan made by a creditor regularly engaged in the business of making loans in which, the debtor is an individual; the debt is incurred primarily for a personal, family, household, or agricultural purpose; the debt is payable in installments or a finance charge is made; and the amount financed does not exceed \$25,000 or the debt, other than one incurred primarily for an agricultural purpose, is secured by an interest in land.⁷
- "credit" is the right granted by a creditor to a consumer to defer payment of debt, to incur debt and defer its payment, or to purchase property or services and defer payment.⁸
- "open-end credit" is an arrangement pursuant to which a creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card; the amounts financed and the finance and other appropriate charges are debited to an account; the finance charge, if made, is computed on the account periodically; and either the consumer has the privilege of paying in full or in installments or the creditor periodically imposes charges computed on the account for delaying payment and permits the consumer to continue to purchase or lease on credit.⁹
- a "precomputed consumer credit transaction" is a consumer credit transaction, other than a consumer lease, in which the debt is a sum comprising the amount financed and the amount of the finance charge computed in advance.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

1 [Unif. Consumer Credit Code § 1.301.](#)

2 [Unif. Consumer Credit Code § 1.301\(11\).](#)

3 [Unif. Consumer Credit Code § 1.301\(18\).](#)

A credit card company's assignee was not a "creditor," for purposes of the Indiana Uniform Consumer Credit Code (IUCCC), and thus, assignee was not subject to IUCCC's section providing for criminal penalties for knowing violations of IUCCC, which included making consumer loans without license and undertaking collection of payments without complying with IUCCC's provisions concerning notification and payment of fees; assignee did not regularly engage in extension of consumer credit and was not entity to whom loan obligation was initially payable, and assignee was not in business of both taking assignments and undertaking direct collection of payments of enforcement of assigned rights. [Rainey v. National Check Bureau, Inc.](#), 849 N.E.2d 776 (Ind. Ct. App. 2006).

4 [Unif. Consumer Credit Code § 1.301\(13\).](#)

5 [Unif. Consumer Credit Code § 1.301\(12\).](#)

6 [Unif. Consumer Credit Code § 1.301\(14\).](#)

7 [Unif. Consumer Credit Code § 1.301\(15\).](#)

The transactions of a purchaser of anticipated income tax refunds constituted loans subject to the Uniform Consumer Credit Code, rather than sales of choses in action, although the contracts involved in the transactions imposed an obligation on the taxpayer to repay the purchaser only if the government failed to pay the amount of the anticipated tax refund, given that the contracts still created a debt; the purchaser serviced primarily individuals who obtained loans for household purposes, it effectively charged a financing fee for its transactions by discounting the face value of the anticipated refund, and generally, its transactions did not involve amounts greater than \$25,000. [State ex rel. Salazar v. The Cash Now Store, Inc.](#), 31 P.3d 161 (Colo. 2001).

8 [Unif. Consumer Credit Code § 1.301\(16\).](#)

9 [Unif. Consumer Credit Code § 1.301\(28\).](#)

10 [Unif. Consumer Credit Code § 1.301\(33\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 308

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 308. Scope and jurisdiction; exclusions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code contains extensive provisions pertaining to the territorial application of its provisions.¹

Observation:

The territorial application provision of Indiana's version of the Uniform Consumer Credit Code, which stated that a loan was deemed to occur in Indiana, thus subjecting the lender to the Code, if a resident of the state entered into a consumer sale, lease, or loan transaction with a creditor in another state and the creditor had advertised or solicited sales, leases, or loans in Indiana by any means, including by mail, brochure, telephone, print, radio, television, the Internet, or electronic means, was unconstitutional under the Commerce Clause, as applied to an Illinois loan company, where the Illinois loan company's contracts with Indiana residents were made and executed in Illinois.²

The Code also provides for the jurisdiction of the courts and service of process by which personal jurisdiction may be acquired over a creditor.³

The Code provides for a number of exclusions:⁴ it does not apply to extensions of credit to organizations⁵ or, with stated exceptions, to the sale of insurance under specified circumstances.⁶ Also, it does not apply to transactions under public utility⁷ or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved⁸ or transactions in securities or commodities accounts with a broker-dealer registered with the Securities and Exchange Commission.⁹ Pawnbrokers who are licensed and whose rates and charges are regulated under or pursuant to local ordinances or state statutes are excluded except with regard to disclosure requirements.¹⁰ An optional provision excludes ceilings on rates or limits on loan maturities of credit extended by a credit union.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Unif. Consumer Credit Code § 1.201(1) to (9).
- 2 *Midwest Title Loans, Inc. v. Mills*, 593 F.3d 660, 73 A.L.R.6th 741 (7th Cir. 2010).
- 3 Unif. Consumer Credit Code § 1.203.
- 4 Unif. Consumer Credit Code § 1.202.
- 5 Unif. Consumer Credit Code § 1.202(1).
"Organization" is defined in Unif. Consumer Credit Code § 1.301(29).
- 6 Unif. Consumer Credit Code § 1.202(2).
- 7 *Jones v. Kansas Gas & Elec. Co.*, 222 Kan. 390, 565 P.2d 597 (1977).
- 8 Unif. Consumer Credit Code § 1.202(3).
- 9 Unif. Consumer Credit Code § 1.202(4).
- 10 Unif. Consumer Credit Code § 1.202(5).
- 11 Unif. Consumer Credit Code § 1.202(6).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 309

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 309. Waiver or agreement to forego rights; settlements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2, 3.1

A consumer may waive or agree to forego rights or benefits under the Uniform Consumer Credit Code only in settlement of a bona fide dispute except as otherwise permitted in the Code.¹ A claim by a consumer against a creditor under the Code, if disputed in good faith, may be settled by agreement,² and a claim against a consumer, whether or not disputed, may be settled for less value than the amount claimed.³ A settlement in which the consumer waives or agrees to forego rights or benefits under the Code is invalid if the court as a matter of law finds the settlement to have been unconscionable.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 1.107\(1\).](#)
- ² [Unif. Consumer Credit Code § 1.107\(2\).](#)
- ³ [Unif. Consumer Credit Code § 1.107\(3\).](#)
- ⁴ [Unif. Consumer Credit Code § 1.107\(4\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 310

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

A. In General

§ 310. Agreement to subject transaction to Uniform Consumer Credit Code

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 4

Parties to a credit transaction or modification thereof that is not a consumer credit transaction may agree in a writing signed by them that the transaction is subject to the provisions of the Act applying to consumer credit transactions, and if the parties so agree, the transaction is a consumer credit transaction for the purposes of the Code.¹ This provision permits creditors, by inserting an appropriate clause in a contract, to be certain that the transaction is within the Code.² Thus, although the Uniform Consumer Credit Code does not ordinarily apply to business loans, the parties to such an agreement may subject themselves to the provisions of the Code by written agreement signed by both parties.³

If a note is ambiguous as to the applicability of the Uniform Consumer Credit Code, the intent of the parties governs, and the intent may be determined from the acts and statements of the parties and the circumstances surrounding the execution of the note.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 1.109.](#)
- 2 As to the definition of a "consumer credit transaction," see [§ 307.](#)
- 3 Comment, following [Unif. Consumer Credit Code § 1.109.](#)
- 4 [Farmers State Bank v. Haflich](#), 10 Kan. App. 2d 333, 699 P.2d 553, 41 U.C.C. Rep. Serv. 227 (1985).
- 4 [Farmers State Bank of Oakley v. Cooper](#), 227 Kan. 547, 608 P.2d 929, 28 U.C.C. Rep. Serv. 733 (1980).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection Two XIII B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Consumer Credit  10.1 to 15

A.L.R. Library

A.L.R. Index, Uniform Consumer Credit Code

West's A.L.R. Digest, Consumer Credit  10.1 to 15

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 311

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

1. Maximum Finance Charges

§ 311. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  10.1 to 12

One of the purposes of the Uniform Consumer Credit Code is the repeal of general usury statutes and the setting of reasonable ceilings on all consumer credit rates.¹ The Code does not fix rates but sets ceilings with the intent to provide effective rate competition.² The regulation of finance charges and interest rates by a state that has adopted the Code, with regard to sales to its residents by an out-of-state mail-order house, does not violate either the Due Process Clause or the Commerce Clause of the Federal Constitution.³

If a credit transaction is one other than a consumer credit transaction, the parties may contract for payment by the debtor of any finance or other charge.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Comment, following [Unif. Consumer Credit Code § 2.601](#).
- ² Comment, following [Unif. Consumer Credit Code § 2.201](#).
- ³ [Aldens, Inc. v. Ryan](#), 454 F. Supp. 465 (W.D. Okla. 1976) (Oklahoma version).
As to regulation of interest rates, generally, see [Am. Jur. 2d, Interest and Usury §§ 3 to 12](#), [45 to 53](#).
- ⁴ [Unif. Consumer Credit Code § 2.601\(1\)](#).
As to the definition of a "consumer credit transaction," see [§ 307](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 312

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

1. Maximum Finance Charges

§ 312. Consumer credit sales

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  10.1 to 12

A.L.R. Library

[Regulation of Consumer Credit Sales and Consumer Leases Under Uniform Consumer Credit Code, 79 A.L.R.6th 211](#)

Trial Strategy

[Violation of the Truth-in-Lending Act and Regulation Z, 73 Am. Jur. Proof of Facts 3d 275](#)

[Equipment Lease As Usurious Loan, 25 Am. Jur. Proof of Facts 2d 521](#)

Forms

Forms drafting principles relating to open-end or close-end consumer credit, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts [\[Westlaw® Search Query\]](#)

With respect to a consumer credit sale, except for a sale pursuant to open-end credit,¹ a creditor may contract for and receive a finance charge not exceeding that permitted in the Code.² The finance charge may not exceed the single annual percentage rate, designated as 18% per year on the unpaid balances of the amount financed,³ or specified graduated rates.⁴ However, a seller may contract for and receive specified minimum finance charges of a stated amount.⁵ The Uniform Consumer Credit Code (UCCC) does not limit or restrict the manner of calculating the finance charge whether by way of add-on, discount, single annual percentage rate, or otherwise so long as the rate does not exceed that permitted.⁶ The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same charge as the graduated rates if the debt is paid according to the agreed terms, and the calculations are made according to the actuarial method.⁷

A transaction between a secured party and a debtor was a "consumer credit sale" as defined by the UCCC and, thus, was subject to its regulations and protections, including the right to cure a deficiency where the debtor was an individual who purchased a car for personal use pursuant to a security agreement with the secured party, which was a commercial creditor.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 § 313.
- 2 Unif. Consumer Credit Code § 2.201(1).
As to the definition of a "consumer credit sale," see § 307.
- 3 Unif. Consumer Credit Code § 2.201(2)(b).
- 4 Unif. Consumer Credit Code § 2.201(2)(a).
- 5 Unif. Consumer Credit Code § 2.201(6).
- 6 Unif. Consumer Credit Code § 2.201(3).
- 7 Unif. Consumer Credit Code § 2.201(3).
- 8 Hassler v. Account Brokers of Larimer County, Inc., 2012 CO 24, 274 P.3d 547 (Colo. 2012).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 313

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

1. Maximum Finance Charges

§ 313. Consumer credit sales—Open-end credit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  10.1 to 12

With respect to a consumer credit sale pursuant to open-end credit, the Uniform Consumer Credit Code provides that a creditor may contract for and receive a finance charge not exceeding that permitted in the Code.¹ The Code permits for each billing cycle a finance charge that is a percentage of an amount not exceeding the greatest of amounts arrived at by computing, as specified, the average daily balance, the balance at the beginning of the first day of the billing cycle, or the median amount within a specified range² and provides for a maximum finance charge according to whether the billing cycle is or is not monthly.³ Provision is made for a minimum charge.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 2.202\(1\).](#)
As to the definition of "open-end credit," see [§ 307](#).
- 2 [Unif. Consumer Credit Code § 2.202\(2\).](#)
- 3 [Unif. Consumer Credit Code § 2.202\(3\).](#)
- 4 [Unif. Consumer Credit Code § 2.202\(4\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 314

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

1. Maximum Finance Charges

§ 314. Consumer loans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  10.1 to 12

Forms

Forms drafting principles relating to consumer loans, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts
[\[Westlaw® Search Query\]](#)

With respect to a consumer loan, including a loan pursuant to open-end credit, a lender who is not a supervised lender may contract for and receive a finance charge not exceeding 18% per year.¹

A supervised lender may contract for and receive a finance charge of 18% per year on the unpaid balances of the amount financed² or pursuant to specified graduated rates.³

The Uniform Consumer Credit Code does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate does not exceed that permitted.⁴ The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates if the loan is paid according to the agreed terms, and the calculation is made according to the actuarial method.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 2.401\(1\).](#)
 As to supervised lenders and loans, see §§ [324](#) to [330](#).
 As to the definition of "consumer loan," see [§ 307](#).
- 2 [Unif. Consumer Credit Code § 2.401\(2\)\(b\).](#)
- 3 [Unif. Consumer Credit Code § 2.401\(2\)\(a\).](#)
- 4 [Unif. Consumer Credit Code § 2.401\(3\).](#)
- 5 [Unif. Consumer Credit Code § 2.401\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 315

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

2. Other Charges

§ 315. Additional charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  13 to 15

In addition to the finance charge,¹ a creditor may contract for and receive additional charges under the Uniform Commercial Code.² These charges include official fees and taxes;³ charges for insurance;⁴ annual charges, payable in advance, for the privilege of using a credit card as specified in the Code;⁵ with respect to a debt secured by an interest in land, bona fide closing costs, reasonable in amount, as specified in the Code;⁶ and charges for other benefits, including insurance, conferred on the consumer if the benefits are of value to the consumer and the charges are reasonable in relation to the benefits and are of a type that is not for credit.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ §§ 311 to 314.
- ² Unif. Consumer Credit Code § 2.501(1).
- ³ Unif. Consumer Credit Code § 2.501(1)(a).
- ⁴ Unif. Consumer Credit Code § 2.501(1)(b).
- ⁵ Unif. Consumer Credit Code § 2.501(1)(c).
- ⁶ Unif. Consumer Credit Code § 2.501(1)(d).

Under one state's version of the Uniform Consumer Credit Code, a lender may charge a loan origination fee on the entire amount financed for a refinanced loan and not merely on the new money advanced to borrower. [Gonzales v. Associates Financial Service Co. of Kansas, Inc., 266 Kan. 141, 967 P.2d 312 \(1998\).](#)
[Unif. Consumer Credit Code § 2.501\(1\)\(e\).](#)

7

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 316

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


B. Finance Charges and Related Provisions

2. Other Charges

§ 316. Delinquency charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  13, 14

A.L.R. Library

[Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50](#)

The Uniform Consumer Credit Code provides that, with respect to a precomputed consumer credit transaction, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its due date, as originally scheduled or as deferred, in an amount not exceeding \$5, which is not more than 5% of the unpaid amount of the instalment.¹ A delinquency charge may be collected only once on an installment, however long it remains in default, and no delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within 10 days after its deferred due date.² A delinquency charge may not be collected on an installment paid in full within 10 days after its scheduled or deferred installment due date even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment has not been paid in full.³

In the case of a precomputed consumer loan, if two installments or parts are in default for a specified number of days or more, the lender may elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances.⁴ In this event, the lender must make a rebate pursuant to the provisions on rebate upon prepayment⁵ as specified in detail in the Code.⁶

If a credit transaction is not a consumer credit transaction within the Code, but it would be such if a finance charge were made, a delinquency charge may not exceed the amounts allowed for finance charges for consumer credit sales pursuant to open-end credit.⁷ Some transactions involving open accounts are not consumer credit transactions within the Code because there is neither a provision for a finance charge nor for payment in installments, and in such cases, the Code limits delinquency charges to amounts allowed by finance charge ceilings in open-end credit.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- | | |
|---|--|
| 1 | Unif. Consumer Credit Code § 2.502(1).
As to deferrals, see § 317 . |
| 2 | Unif. Consumer Credit Code § 2.502(2). |
| 3 | Unif. Consumer Credit Code § 2.502(3). |
| 4 | Unif. Consumer Credit Code § 2.502(4).
As to the definition of a "precomputed consumer credit transaction," see § 307 . |
| 5 | § 323 . |
| 6 | Unif. Consumer Credit Code § 2.502(4). |
| 7 | Unif. Consumer Credit Code § 2.601(2).
As to maximum finance charges for open-end credit sales, see § 313 . |
| 8 | Comment, following Unif. Consumer Credit Code § 2.601 . |

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 317

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

2. Other Charges

§ 317. Deferral charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

The Uniform Consumer Credit Code permits deferral charges¹ and, in this regard, defines a "deferral" as a postponement of the scheduled due date of an installment as originally scheduled or as previously deferred² and a "standard deferral" as a deferral with respect to a transaction made as of the due date of an installment as scheduled before the deferral by which the due dates of that installment and all subsequent installments as scheduled before the deferral are deferred for a period equal to the deferred period.³

Before or after default in payment of a scheduled instalment of a transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid instalments, and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge not exceeding that provided in this Code.⁴ A standard deferral may be made as of the due date, as originally scheduled or as deferred, of an installment with respect to which no delinquency charge⁵ has been made or, if made, is deducted from the deferral charge.⁶

The creditor may make appropriate additional charges⁷ in addition to the authorized deferral charges, and the amount of such additional charges may be added to the deferral charge or to the amount deferred for the purpose of computing the deferral charge.⁸ The parties may agree in writing at the time of a transaction that, if an instalment is not paid within 10 days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. A deferral charge may not be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 2.503.](#)
- 2 [Unif. Consumer Credit Code § 2.503\(1\)\(b\).](#)
- 3 [Unif. Consumer Credit Code § 2.503\(1\)\(f\).](#)
- 4 [Unif. Consumer Credit Code § 2.503\(2\).](#)
As to the definition of "precomputed consumer credit transaction," see [§ 307](#).
- 5 As to delinquency charges, see [§ 316](#).
- 6 [Unif. Consumer Credit Code § 2.503\(3\).](#)
- 7 [§ 315.](#)
- 8 [Unif. Consumer Credit Code § 2.503\(5\).](#)
- 9 [Unif. Consumer Credit Code § 2.503\(6\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 318

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

2. Other Charges

§ 318. Refinancing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

Under the Uniform Consumer Credit Code, the creditor and consumer in a consumer credit transaction, except a consumer lease, may agree to the refinancing of the unpaid balance, and the creditor may contract for and receive a finance charge based on the amount financed resulting from the refinancing.¹ The refinancing charge may not exceed the rates permitted under specified provisions of the Code pertaining to finance charges for consumer credit sales other than open-end credit if refinanced or for consumer loans if refinanced.² The Code sets forth the method of determining the amount financed resulting from the refinancing for the purpose of determining the permitted finance charge.³ This provision of the Code is intended to provide the method of obtaining the amount financed on which the finance charge is based when a consumer credit sale or consumer loan is refinanced and to set the ceiling for such charge.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 2.504.](#)
One state's version of the Uniform Consumer Credit Code authorizes a lender to charge a loan origination fee on the entire amount financed for a refinanced loan and not merely on the new money advanced to borrower. [Gonzales v. Associates Financial Service Co. of Kansas, Inc.](#), 266 Kan. 141, 967 P.2d 312 (1998).
As to the definition of "consumer credit transaction," see [§ 307](#).
- ² [Unif. Consumer Credit Code § 2.504](#), referring to [Unif. Consumer Credit Code §§ 2.201, 2.401](#).

As to maximum finance charges, see §§ [311](#) to [314](#).

[3](#) [Unif. Consumer Credit Code § 2.504](#).

[4](#) Comment, following [Unif. Consumer Credit Code § 2.504](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 319

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


B. Finance Charges and Related Provisions

2. Other Charges

§ 319. Consolidation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction and the consumer becomes obligated on another such transaction with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments.¹

If the previous consumer credit transaction was not precomputed, the unpaid amount and accrued charges may be added to the amount financed under the subsequent transaction, and if the previous transaction was precomputed, the unpaid balance may be refinanced, and the consolidation consists of adding the refinanced amount to the amount financed with respect to the subsequent transaction.²

If a consumer credit transaction arises out of a consumer credit sale, consolidation may be achieved in a single schedule of payments either pursuant to the above provisions or by adding together the unpaid balances with respect to the two sales.³ If the debts consolidated arise exclusively from a consumer credit sale, the creditor may make a finance charge not exceeding that permitted for consumer credit sales other than open-end credit.⁴ If the debts consolidated include a debt arising from a prior or contemporaneous consumer loan, the creditor may make a finance charge not exceeding that permitted for consumer loans by either supervised or unsupervised lenders, whichever is appropriate.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 2.505\(2\).](#)
- 2 [Unif. Consumer Credit Code § 2.505\(2\).](#)
As to refinancing, see § 318.
- 3 [Unif. Consumer Credit Code § 2.505\(4\).](#)
As to the definition of "consumer credit sale," see § 307.
- 4 [Unif. Consumer Credit Code § 2.505\(3\).](#)
- 5 [Unif. Consumer Credit Code § 2.505\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 320

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


B. Finance Charges and Related Provisions

2. Other Charges

§ 320. Advances to perform covenants of consumer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

If an agreement with respect to a consumer credit transaction other than a consumer lease contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral, and the creditor pursuant to the agreement pays for the performance of the duties on behalf of the consumer, the amounts paid may be added to the debt.¹ However, within a reasonable time after advancing any sums, the creditor must state to the consumer in writing the amount of the advance and any charges with respect to this amount and any revised payment schedule and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages.²

A finance charge may be made for sums advanced at a rate not exceeding the charge required to be stated to the consumer in a disclosure statement, but with respect to open-end credit, the amount of the advance may be added to the unpaid balance of the debt, and the creditor may make a finance charge not exceeding that permitted for consumer credit sales pursuant to open-end credit or for consumer loans, whichever is appropriate.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 2.506\(1\).](#)
- ² [Unif. Consumer Credit Code § 2.506\(1\).](#)
- ³ [Unif. Consumer Credit Code § 2.506\(2\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 321

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

2. Other Charges

§ 321. Attorney's fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 14

The Uniform Consumer Credit Code provides alternative provisions with regard to the payment by the consumer of attorney's fees. The first alternative provides that no agreement with respect to a consumer credit transaction may provide for payment by the consumer of attorney's fees.¹ This reflects a policy decision to follow some small-loan acts which treat collection costs as a part of the creditor's cost of doing business rather than as a charge to be imposed on a defaulting consumer.²

The second alternative prohibits an agreement for the payment by the consumer of attorney's fees with respect to a consumer loan if the loan is not pursuant to open-end credit and the amount financed is \$1,000 or less or if the loan is pursuant to open-end credit and the balance of the account at the time of default is \$1,000 or less.³ This alternative also provides that, with respect to any other consumer credit transaction, the agreement may provide for payment by the consumer of reasonable attorney's fees not in excess of 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the creditor.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 2.507](#), Alternative A.
- ² Comment, following [Unif. Consumer Credit Code § 2.507](#), Alternative A.
- ³ [Unif. Consumer Credit Code § 2.507\(1\)](#), Alternative B.

4 [Unif. Consumer Credit Code § 2.507\(2\)](#), Alternative B.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 322

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

B. Finance Charges and Related Provisions

2. Other Charges

§ 322. Conversion of precomputed loan to one based on unpaid balance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

The provision of the Uniform Consumer Credit Code pertaining to delinquency charges¹ permits the lender to elect to convert the loan from a precomputed loan to one in which the finance charge is based on unpaid balances.² The creditor may do so only if at least two installments or parts of a precomputed consumer loan are in default for 10 days or more.³ In the event of such conversion, the creditor must make a rebate pursuant to the provisions on rebate upon prepayment⁴ as if the date of prepayment were one day before the maturity date of a delinquent installment and thereafter may make a finance charge as authorized for consumer loans.⁵ If the creditor proceeds under the Code, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the first delinquent installment must be rebated, and no further delinquency or deferral charges may be made.⁶

The Uniform Consumer Credit Code permits the conversion of a consumer credit transaction to an open-end credit account.⁷ The parties may agree at or within a specified number of days before the time of conversion to add the unpaid balance of a consumer credit transaction—except a consumer lease—not made pursuant to open-end credit, to the consumer's open-end credit account.⁸ The unpaid balance so added is an amount equal to the amount financed determined according to the provisions on finance charge on refinancing.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 § 316.
- 2 Unif. Consumer Credit Code § 2.502(4).
As to the definition of a "precomputed consumer loan," see § 307.
- 3 Unif. Consumer Credit Code § 2.502(4).
- 4 § 323.
- 5 Unif. Consumer Credit Code § 2.502(4).
As to charges for consumer loans, see § 314.
- 6 Unif. Consumer Credit Code § 2.502(4).
- 7 Unif. Consumer Credit Code § 2.508.
- 8 Unif. Consumer Credit Code § 2.508.
- 9 Unif. Consumer Credit Code § 2.508.
As to refinancing provisions, see § 318.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 323

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


B. Finance Charges and Related Provisions

2. Other Charges

§ 323. Prepayment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 13

A consumer may prepay in full the unpaid balance of a consumer credit transaction, except a consumer lease, at any time without penalty.¹ This right to prepay is subject to Code provisions on rebate upon prepayment.²

The Uniform Consumer Credit Code does not apply to real property credit transactions in which the finance charge does not exceed a stated percentage because these are not consumer credit transactions.³ The Code does not give a consumer the right to receive a rebate upon making a partial prepayment without the consent of the creditor.⁴

The Code contains lengthy and detailed provisions with respect to rebate if a consumer prepays in full the unpaid balance of a consumer credit transaction.⁵ The terms used in certain sections of the Code⁶ are defined by reference to the definitions in the provision of the Code pertaining to deferral charges.⁷ In this regard, the "sum of the balances method" is said to be also known as the "rule of 78" and is defined as meaning a method employed with respect to a transaction to determine the portion of the finance charge attributable to a period of time before the scheduled due date of the final installment of the transaction.⁸

Upon prepayment in full of a precomputed consumer credit transaction, the creditor must rebate an amount not less than the unearned portion of the finance charge computed according to the Code except as otherwise provided.⁹ Upon prepayment of a consumer credit transaction, whether or not precomputed, except a consumer lease or one pursuant to open-end credit, the creditor may collect or retain a specified minimum charge.¹⁰ The Code prescribes two methods of computing the rebate.¹¹

The Uniform Consumer Credit Code does not preclude the collection of delinquency charges except as otherwise provided.¹² If maturity is accelerated and judgment is entered, the consumer is entitled to the same rebate as if payment had been made on the date judgment is entered.¹³ Provision is also made for a rebate if a precomputed consumer credit transaction is prepaid by proceeds of consumer credit insurance.¹⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Unif. Consumer Credit Code § 2.509.
- 2 Unif. Consumer Credit Code § 2.509.
- 3 Comment, following Unif. Consumer Credit Code § 2.509.
- 4 Comment, following Unif. Consumer Credit Code § 2.509.
- 5 Unif. Consumer Credit Code § 2.510.
- 6 Unif. Consumer Credit Code § 2.510(4) to (8).
- 7 Unif. Consumer Credit Code § 2.510(3), referring to Unif. Consumer Credit Code § 2.503(1).
- 8 Unif. Consumer Credit Code § 2.503(1)(g).
- 9 Unif. Consumer Credit Code § 2.510(1).
- 10 Unif. Consumer Credit Code § 2.510(2).
- 11 Unif. Consumer Credit Code § 2.510(4), (5).
- 12 Unif. Consumer Credit Code § 2.510(6).
- 13 Unif. Consumer Credit Code § 2.510(7).
- 14 Unif. Consumer Credit Code § 2.510(8).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection Two XIII D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4, 14, 16 to 19

A.L.R. Library

A.L.R. Index, Uniform Consumer Credit Code

West's A.L.R. Digest, Consumer Credit  2 to 4, 14, 16 to 19

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 331

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

1. Disclosure

§ 331. Relation to Federal Truth in Lending Act

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

The Uniform Consumer Credit Code carries its own disclosure provisions¹ and requires compliance with the Federal Truth in Lending Act.²

The Code provides that, to the extent that the Truth in Lending Act does not impose duties or obligations upon a person in a credit transaction, except a consumer lease that is a consumer credit transaction under the Code, a person must make or give to the consumer disclosures, information, and notices in accordance with the Truth in Lending Act with respect to the credit transactions.³ The Truth in Lending Act is deemed to apply to a credit transaction that is a consumer credit transaction under the Code notwithstanding that it is included in a class of transactions exempted from the Truth in Lending Act by regulation.⁴

The provisions requiring compliance with the Truth in Lending Act apply to the sale of an interest in land or a loan secured by an interest in land, without regard to the rate of finance charge, if the sale or loan is otherwise a consumer credit sale or consumer loan.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ Unif. Consumer Credit Code §§ 3.201 to 3.209.

² Unif. Consumer Credit Code § 3.201.

As to the Truth in Lending Act, generally, see §§ [1](#) to [146](#).

[3](#) [Unif. Consumer Credit Code § 3.201\(1\)](#).

[4](#) [Unif. Consumer Credit Code § 3.201\(2\)](#).

As to exemption of state-regulated transactions, see § [263](#).

[5](#) [Unif. Consumer Credit Code § 3.102](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 332

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

1. Disclosure

§ 332. Consumer leases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

A.L.R. Library

[Regulation of Consumer Credit Sales and Consumer Leases Under Uniform Consumer Credit Code, 79 A.L.R.6th 211](#)

Forms

Forms relating to disclosures for consumer leases or loans, see Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts
[\[Westlaw® Search Query\]](#)

The disclosure provisions of the Uniform Consumer Credit Code apply to certain consumer leases, requiring the lessor give to the lessee specified information¹ concerning the amounts, number, and schedules of payment; the charges imposed; the terms under which the lessee may terminate the lease prior to the end of its term; and the liabilities that the lessee may incur at the end

of the term.² The Code specifies the manner of and other requirements as to the disclosure,³ which provisions make the time and manner of disclosure consistent with the requirements of the Federal Truth in Lending Act.⁴

Definition:

Under the Code, a "consumer lease" is defined as a lease of goods that a lessor regularly engaged in the business of leasing makes to a person (except an organization), who takes under the lease primarily for a personal, family, household, or agricultural purpose; in which the amount payable under the lease does not exceed \$25,000; which is for a term not exceeding four months; and which is not made pursuant to a lender credit card.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 3.202\(1\)\(a\) to \(h\).](#)
- 2 Comment, following [Unif. Consumer Credit Code § 3.202.](#)
As to the Uniform Consumer Leases Act, see §§ [415](#) to [430](#).
- 3 [Unif. Consumer Credit Code § 3.202\(2\)\(a\) to \(e\).](#)
- 4 Comment, following [Unif. Consumer Credit Code § 3.202.](#)
- 5 [Unif. Consumer Credit Code § 1.301\(14\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 333

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

1. Disclosure

§ 333. Notice to consumer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

Forms

[Am. Jur. Legal Forms 2d § 66:89](#) (Form drafting guide—Checklist—Specific disclosure requirements—Consumer lease [Uniform Commercial Credit Code § 3.202])

Forms relating to disclosures for consumer leases or loans, see [Am. Jur. Legal Forms 2d—Consumer Credit Protection Acts](#) [[Westlaw® Search Query](#)]

Under the Uniform Consumer Credit Code, a creditor must give to the consumer a copy of any writing evidencing a consumer credit transaction, except one pursuant to open-end credit, if the writing requires or provides for the signature of the consumer.¹ The writing evidencing the consumer's obligation to pay the debt must contain a clear and conspicuous notice informing the consumer not to sign the writing before reading it, that the consumer is entitled to a copy, and, except in case of a consumer lease, that the consumer is also entitled to prepay the unpaid balance at any time without penalty and may be entitled to receive a refund of unearned charges in accordance with law.² The Code contemplates the receipt by the consumer of a copy of the credit agreement containing conspicuous legends in closed-end transactions, not open-end transactions.³

Practice Tip:

The Code sets forth a notice that will satisfy the Code requirements if it is clear and conspicuous.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 3.203.](#)
- 2 [Unif. Consumer Credit Code § 3.203.](#)
As to the right to make prepayment and receive a rebate, see [§ 323.](#)
- 3 Comment, following [Unif. Consumer Credit Code § 3.203.](#)
- 4 [Unif. Consumer Credit Code § 3.203.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 334

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

1. Disclosure

§ 334. Notice of assignment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

The Uniform Consumer Credit Code protects a consumer who pays the original creditor until the consumer receives notice of an assignment.¹ Thus, a consumer may pay the original creditor until the consumer receives notification of assignment of rights to payment pursuant to a consumer credit transaction, and that payment is to be made to the assignee.² A notification that does not reasonably identify the rights assigned is ineffective, and if requested, the assignee must furnish reasonable proof that the assignment has been made, and unless the assignee does so, the consumer may pay the original creditor.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ Comment, following [Unif. Consumer Credit Code § 3.204](#).
- ² [Unif. Consumer Credit Code § 3.204](#).
- ³ [Unif. Consumer Credit Code § 3.204](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 335

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

1. Disclosure

§ 335. Notice to cosigners and similar parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

The Uniform Consumer Credit Code requires that accommodation parties be given a separate notice of potential liabilities as a condition of being bound.¹ A natural person, other than the spouse of the consumer, is not obligated as a cosigner, comaker, guarantor, endorser, surety, or similar party with respect to a consumer credit transaction unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, such person receives a separate written notice that contains a completed identification of the debt he or she may have to pay and reasonably informs the person of his or her obligation.² A person entitled to notice must also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice.³

Practice Tip:

The Code sets forth the form of a notice that will be in substantial compliance therewith if it is clear and conspicuous.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Comment, following [Unif. Consumer Credit Code § 3.208](#).
- 2 [Unif. Consumer Credit Code § 3.208\(1\)](#).
- 3 [Unif. Consumer Credit Code § 3.208\(4\)](#).
- 4 [Unif. Consumer Credit Code § 3.208\(2\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 336

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

1. Disclosure

§ 336. Change in terms of open-end credit accounts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

Whether a change is authorized by prior agreement, the Uniform Consumer Credit Code permits a creditor to change the terms of an open-end credit account applying to any balance incurred before or after the effective date of the change.¹ However, if the change increases the rate of the finance charge or of additional charges, alters the method of determining the balance upon which charges are made so that increased charges may result, or imposes or increases minimum charges, the change is effective with respect to a balance incurred before the effective date of the change only if the consumer after receiving disclosure of the change agrees to it in writing or the creditor delivers or mails to the consumer two written disclosures of the change, the first at least three months before the effective date of the change and the second at a later time before the effective date of the change.² If a creditor attempts to change the terms of an open-end credit account as provided in this section without complying with the statute, any additional cost or charge to the consumer resulting from the change is an excess charge and is subject to the remedies available to the consumer.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.205\(1\).](#)
- ² [Unif. Consumer Credit Code § 3.205\(1\).](#)
- ³ [Unif. Consumer Credit Code § 3.205\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 337

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

1. Disclosure

§ 337. Receipts; statements of account; evidence of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

The Uniform Consumer Credit Code requires a creditor to deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit transaction. A periodic statement showing a payment received by mail complies with the Code.¹

The person to whom an obligation is owed pursuant to a consumer credit transaction, except one pursuant to open-end credit, shall provide a written statement of the dates and amounts of payments made within the 12 months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement.²

After a consumer has fulfilled all obligations with respect to a consumer credit transaction, except one pursuant to open-end credit, the person to whom the obligation was owed, upon request of the consumer, must deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.206\(1\).](#)
- ² [Unif. Consumer Credit Code § 3.206\(2\).](#)
- ³ [Unif. Consumer Credit Code § 3.206\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 338

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

1. Disclosure

§ 338. Insurance premium loans

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

An agreement pursuant to which an insurance premium loan is made shall contain the names of the insurance agent or broker negotiating each policy or contract and of the insurer issuing each policy or contract; the number and inception date of, and premium for, each policy or contract; the date on which the term of the loan begins; and a clear and conspicuous notice that each policy or contract may be cancelled if payment is not made in accordance with the agreement.¹ If a policy or contract has not been issued at the time the agreement is signed, the agreement may provide that the agent or broker may insert appropriate information in the agreement, and if he or she does so, the agent or broker must furnish such information promptly in writing to the insured.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Unif. Consumer Credit Code § 3.207.](#)

² [Unif. Consumer Credit Code § 3.207.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 339

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

1. Disclosure

§ 339. Advertising

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit 16

The provisions on advertising that appear in the Federal Truth in Lending Act¹ are supplemented by a provision of the Uniform Consumer Credit Code.²

The Code provides that a seller, lessor, or lender may not advertise, print, publish, distribute, broadcast, or cause the same in any manner any statement or representation with regard to the rates, terms, or conditions of credit with respect to a consumer credit transaction that is false, misleading, or deceptive.³

Advertising that complies with the Federal Truth in Lending Act does not violate the Code.⁴

The Code does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ See §§ 90 to 95.

² Comment, following [Unif. Consumer Credit Code § 3.209](#).

³ [Unif. Consumer Credit Code § 3.209\(1\)](#).

4 [Unif. Consumer Credit Code § 3.209\(2\).](#)

5 [Unif. Consumer Credit Code § 3.209\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 340

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 340. Security in sales and leases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The manner in which sellers and lessors may secure the obligation arising from a consumer credit sale or consumer lease is limited by the Uniform Consumer Credit Code,¹ which provides that a seller may take a security interest in property sold in a consumer credit sale.² In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired, or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is \$1,000 or more, or in the case of a security interest in goods, the debt secured is \$300 or more.³ However, except as provided with respect to cross-collateral,⁴ a seller may not otherwise take a security interest in property to secure the debt arising from a consumer credit sale.⁵ A sale of an interest in land in which the finance charge is 12% or less does not come within the definition of a consumer credit sale under the Code.⁶

A seller may take a security interest in property to secure a debt arising from a consumer credit sale primarily for an agricultural purpose.⁷

With respect to a consumer lease, except one primarily for an agricultural purpose, a lessor may not take a security interest in property to secure the debt arising from the lease.⁸ This provision prohibits the securing of a lease obligation by taking a security interest in property.⁹

A security interest taken in violation of the above provisions is void.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 3.301.](#)
As to the definition of consumer lease, see [§ 307.](#)
As to the definition of consumer credit sale, see [§ 307.](#)
- 2 [Unif. Consumer Credit Code § 3.301\(1\).](#)
- 3 [Unif. Consumer Credit Code § 3.301\(1\).](#)
- 4 [§ 341.](#)
- 5 [Unif. Consumer Credit Code § 3.301\(1\).](#)
- 6 [§ 307.](#)
- 7 [Unif. Consumer Credit Code § 3.301\(1\).](#)
- 8 [Unif. Consumer Credit Code § 3.301\(2\).](#)
- 9 Comment, following [Unif. Consumer Credit Code § 3.301.](#)
- 10 [Unif. Consumer Credit Code § 3.301\(3\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 341

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 341. Cross-collateral

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

In addition to contracting for a security interest pursuant to the provisions on security in sales or leases,¹ a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if, as a result of a prior sale, the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.²

However, the Uniform Consumer Credit Code limits the rate of the finance charge in cross-collateral situations.³ If a seller contracts for a security interest in other property pursuant to the Code, the rate of the finance charge on the aggregate unpaid balances so secured may not exceed that permitted if such balances were consolidated pursuant to provisions of the Code governing finance charges on consolidation.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ § 340.
- ² Unif. Consumer Credit Code § 3.302(1).
As to when a seller loses the security interest in goods in a cross-collateral situation, see § 342.
- ³ Comment, following Unif. Consumer Credit Code § 3.302.
- ⁴ Unif. Consumer Credit Code § 3.302(2).

As to finance charges on consolidation, see [§ 319](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 342

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 342. Debt secured by cross-collateral

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code provides that if debts arising from two or more consumer credit sales, except sales primarily for an agricultural purpose or pursuant to open-end credit, are secured by cross-collateral or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made.¹ To the extent debts are paid according to the Code, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.²

Payments received by the seller upon an open-end credit account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.³

If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.⁴

Footnotes

- 1 [Unif. Consumer Credit Code § 3.303\(1\)](#).
As to the definition of open-end credit, see [§ 307](#).
- 2 [Unif. Consumer Credit Code § 3.303\(1\)](#).
- 3 [Unif. Consumer Credit Code § 3.303\(2\)](#).
- 4 [Unif. Consumer Credit Code § 3.303\(3\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 343

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 343. Use of multiple agreements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code prohibits a creditor from using multiple agreements with respect to a single consumer credit transaction with intent to obtain a higher finance charge than otherwise would be permitted by the Code.¹ The excess amount of finance charge resulting from a violation of the above provision is an excess charge for the purposes of the Code provisions on rights of parties and the provisions on civil actions by the Administrator.² The graduated rate ceiling structure of the Code allows a creditor to charge higher rates on smaller balances, and in order to achieve maximum rates, a seller might arbitrarily divide a transaction into two or more agreements in order that the amount financed under each is within the dollar amount on which the highest rate can be charged; if the seller does so, the excess amount of finance charge provided for is made an excess charge for purposes of the provisions on remedies by consumers and the Administrator.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.304\(1\).](#)
As to finance charges, see §§ [311](#) to [314](#).
- ² [Unif. Consumer Credit Code § 3.304\(2\).](#)
- ³ Comment, following [Unif. Consumer Credit Code § 3.304](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 344

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 344. Assignment of earnings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

A creditor is prohibited by the Uniform Consumer Credit Code from taking an assignment of earnings of the consumer for payment or as security for payment of a debt arising out of a consumer credit transaction.¹ An assignment in violation of the Code is unenforceable by the assignee of the earnings and revocable by the consumer.² However, the Code does not prohibit a consumer from authorizing deductions from the consumer's earnings in favor of the creditor if the authorization is revocable, the consumer is given a complete copy of the writing evidencing the authorization at the time of signing it, and the writing contains on its face a conspicuous notice of the right to revoke the authorization.³

A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to the seller secured by an assignment of earnings.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.305\(1\).](#)
- ² [Unif. Consumer Credit Code § 3.305\(1\).](#)
- ³ [Unif. Consumer Credit Code § 3.305\(1\).](#)
- ⁴ [Unif. Consumer Credit Code § 3.305\(2\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 345

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 345. Authorization to confess judgment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

Under the Uniform Consumer Credit Code, a consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit transaction.¹ An authorization in violation of this provision is void.² The Code reflects the view of the majority of states which prohibit authorizations to confess judgment and is consistent with the policy of the Code assuring a consumer the right to a judicial hearing before judgment is entered against him or her.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.306.](#)
- ² [Unif. Consumer Credit Code § 3.306.](#)
- ³ Comment, following [Unif. Consumer Credit Code § 3.306.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 346

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 346. Prohibition of negotiable instruments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code provides that, with respect to a consumer credit sale or consumer lease (except a sale or lease primarily for an agricultural purpose), a creditor may not take a negotiable instrument other than a check dated not later than 10 days after its issuance as evidence of the obligation of the consumer.¹ This provision, together with provisions pertaining to assignments and subjecting assignees to defenses,² states a major tenet of the Code to abrogate the holder-in-due-course doctrine in consumer cases, with the above provision constituting the first step in prohibiting the use of negotiable instruments in consumer credit sales and consumer leases.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Unif. Consumer Credit Code § 3.307.](#)

² [§ 351.](#)

³ Comment, following [Unif. Consumer Credit Code § 3.307.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 347

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 347. Balloon payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code provides that if any scheduled payment of a consumer credit transaction is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance, without penalty, the amount of the payment at the time it is due and that the terms of such refinancing may be no less favorable to the consumer than the terms of the original transaction.¹ The Code provision is inapplicable to a consumer lease,² a transaction pursuant to open-end credit,³ a transaction primarily for an agricultural purpose,⁴ a transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the consumer,⁵ or a transaction of a class defined by rule of the Administrator as not requiring the protection of the consumer in this regard.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code § 3.308\(1\).](#)
- ² [Unif. Consumer Credit Code § 3.308\(2\)\(a\).](#)
- ³ [Unif. Consumer Credit Code § 3.308\(2\)\(b\).](#)
- ⁴ [Unif. Consumer Credit Code § 3.308\(2\)\(c\).](#)
- ⁵ [Unif. Consumer Credit Code § 3.308\(2\)\(d\).](#)
- ⁶ [Unif. Consumer Credit Code § 3.308\(2\)\(e\).](#)

As to rules of the Administrator, see [§ 391](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 348

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

2. Limitations on Agreements and Practices

§ 348. Referral sales and leases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code prohibits the giving or offering of a rebate or discount or other value as an inducement for a sale or a lease for giving to the seller or lessor the names of prospective buyers or lessees or otherwise aiding in making a sale or lease to another person if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event after the time the consumer agrees to buy or lease.¹

A consumer credit sale or consumer lease entered into in violation of this provision is unenforceable by the seller or lessor, and the consumer, at his or her option, may rescind the agreement or retain the property delivered and the benefit of any services performed, without any obligation to pay.²

This provision cannot be evaded by creditors by the use of credit cards or consumer loans.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Unif. Consumer Credit Code § 3.309.](#)

² [Unif. Consumer Credit Code § 3.309.](#)

³ Comment, following [Unif. Consumer Credit Code § 3.309.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 349

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

3. Limitations on Consumers' Liabilities

§ 349. Generally; consumer leases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4

The Uniform Consumer Credit Code provides for a number of limitations on consumer liabilities.¹

Under the Code, the obligation of a lessee upon the expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease; this limitation does not apply, however, to charges for damages to the leased property or for other default.² This provision is designed to protect consumer lessees against abuses associated with what may be described as open-end leases in which the parties contract that at the expiration of the lease, the article leased will have a certain depreciated value and will be sold.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Unif. Consumer Credit Code §§ 3.401 to 3.405.](#)
As to the definition of consumer lease, see [§ 307](#).
- ² [Unif. Consumer Credit Code § 3.401.](#)
- ³ Comment, following [Unif. Consumer Credit Code § 3.401](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 350

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

3. Limitations on Consumers' Liabilities

§ 350. Limitation on default charges

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4, 14

A.L.R. Library

[Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50](#)

Except for reasonable expenses incurred in realizing on a security interest, an agreement with respect to a consumer credit transaction other than a consumer lease may not provide for any charges as a result of default by the consumer except those authorized by the Uniform Consumer Credit Code.¹

Any provision that violates this provision is unenforceable.²

Except for delinquency charges,³ attorney's fees,⁴ and expenses arising from realizing on collateral, a creditor may impose no collection or default charges on a consumer.⁵

Footnotes

- 1 [Unif. Consumer Credit Code § 3.402.](#)
- 2 [Unif. Consumer Credit Code § 3.402.](#)
- 3 [§ 316.](#)
- 4 [§ 321.](#)
- 5 Comment, following [Unif. Consumer Credit Code § 3.402.](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 351

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

3. Limitations on Consumers' Liabilities

§ 351. Who is subject to consumer claims and defenses-assignee

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4, 17 to 19

Under the Code, an assignee of the rights of the seller or lessor under a consumer credit sale or consumer lease is subject to all claims and defenses of the consumer against the seller or lessor arising from the sale or lease notwithstanding that the assignee is a holder in due course of a negotiable instrument.¹ However, a consumer's claim or defense may be asserted against an assignee only if the consumer has made a good-faith attempt to obtain satisfaction from the seller or lessor and then only to the extent of the amount owing to the assignee at the time the assignee has notice of the claim or defense.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 3.404\(1\).](#)
As to the Code provision that, until a consumer receives notification of assignment, the consumer may pay the original creditor, see [§ 334](#).
- 2 [Unif. Consumer Credit Code § 3.404\(2\).](#)
As to the provision of the Code prohibiting certain negotiable instruments in consumer sales, see [§ 346](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 352

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code


D. Regulation of Agreements and Practices

3. Limitations on Consumers' Liabilities

§ 352. Who is subject to consumer claims and defenses-assignee—Card issuer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4, 17 to 19

A.L.R. Library

[Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 A.L.R.4th 231](#)

The Uniform Consumer Credit Code may subject a card issuer to claims and defenses of a cardholder against a seller or lessor arising from sales or leases made pursuant to a credit card.¹ The Code neither limits the liability of nor imposes liability on a card issuer as a manufacturer, supplier, seller, or lessor of property or services sold or leased pursuant to the credit card.²

A card issuer is subject to claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services by a seller or lessor who is licensed, franchised, or permitted by the issuer to do business under the trade name or designation of the issuer, to the extent of the original amount owing to the issuer with respect to the sale or lease as to which the claim or defense arose.³

The Code provides that, except as otherwise provided, a card issuer, including a lender credit card issuer, is subject to all claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services pursuant to the

credit card, subject, however, to specified conditions.⁴ These conditions require that the original amount owing to the issuer exceeds a specified sum of money,⁵ that the residence of the cardholder and the place in which the sale or lease occurred are in the same state or within a hundred miles of each other,⁶ that the cardholder has made a good-faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense,⁷ and that to the extent of the amount owing to the issuer with respect to the sale or lease of the property or services as to which the claim or defense arose at the time, the issuer has notice of the claim or defense.⁸

An agreement may not limit or waive the claims or defenses of a cardholder under the foregoing provisions.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Unif. Consumer Credit Code § 3.403\(1\).](#)
- 2 [Unif. Consumer Credit Code § 3.403\(1\).](#)
[As to a credit card issuer's liability for wrongful cancellation, dishonor, or billing, see \[Am. Jur. 2d, Credit Cards and Charge Accounts\]\(#\) §§ 33, 34.](#)
- 3 [Unif. Consumer Credit Code § 3.403\(2\).](#)
- 4 [Unif. Consumer Credit Code § 3.403\(3\).](#)
- 5 [Unif. Consumer Credit Code § 3.403\(3\)\(a\).](#)
- 6 [Unif. Consumer Credit Code § 3.403\(3\)\(b\).](#)
- 7 [Unif. Consumer Credit Code § 3.403\(3\)\(c\).](#)
- 8 [Unif. Consumer Credit Code § 3.403\(3\)\(d\).](#)
- 9 [Unif. Consumer Credit Code § 3.403\(5\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

17 Am. Jur. 2d Consumer Protection § 353

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part Two. State Legislation; Uniform Laws

XIII. Uniform Consumer Credit Code

D. Regulation of Agreements and Practices

3. Limitations on Consumers' Liabilities

§ 353. Who is subject to consumer claims and defenses-assignee—Lender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  2 to 4, 17 to 19

A provision of the Uniform Consumer Credit Code¹ extends the policy of the Code of preserving consumer claims and defenses to direct loan cases in those situations in which the relationship between the seller or lessor and the lender justifies allowing the consumer to raise claims or defenses against the lender.² A lender,³ except the issuer of a lender credit card,⁴ who makes a consumer loan to enable a consumer to buy or lease from a particular seller or lessor property or services is subject to all claims and defenses of the consumer against the seller or lessor arising from that sale or lease of the property or service⁵ if certain specified conditions exist.⁶

A claim or defense of a consumer may be asserted against the lender only if the consumer has made a good-faith attempt to obtain satisfaction from the seller or lessor and then only to the extent of the amount owing to the lender with respect to the sale or lease as to which the claim or defense arose at the time the lender has notice of the claim or defense.⁷

An agreement may not limit or waive the claims or defenses of a consumer under the foregoing provisions.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Unif. Consumer Credit Code § 3.405.](#)

2 Comment, following [Unif. Consumer Credit Code § 3.405](#).
3 As to the definition of lender, see [Unif. Consumer Credit Code § 1.301\(23\)](#).
4 [§ 352](#).
5 [Unif. Consumer Credit Code § 3.405\(1\)](#).
6 [Unif. Consumer Credit Code § 3.405\(1\)\(a\) to \(f\)](#).
7 [Unif. Consumer Credit Code § 3.405\(2\)](#).
8 [Unif. Consumer Credit Code § 3.405\(4\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government
Works.